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CRIMINAL JUSTICE REFORM AND STRENGTHENING OF LEGAL INSTITUTIONS: MEASURES TO REGULATE FIREARMS

Report of the Secretary-General

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1997/28, reiterated its request to the Secretary-General to publish the United Nations international study on firearm regulation. In the same resolution, the Council requested the Secretary-General to include in the provisional agendas for the four regional workshops on firearm regulation the possible development of a United Nations declaration of principles, based on the regulatory approaches suggested in that resolution; to seek views of Member States, institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, relevant United Nations entities and intergovernmental and non-governmental organizations on the development of a declaration of principles; to explore ways and means of developing a programme of continuing education for criminal justice administrators and of public education and awareness-building in relation to the links between firearms in civilian use and the unacceptable levels of violence in cities, communities and families; and to submit a report on the implementation of that resolution to the Commission on Crime Prevention and Criminal Justice at its seventh session.

I. INTERNATIONAL STUDY ON FIREARM REGULATION AND FOLLOW-UP

2. The draft United Nations international study on firearm regulation was made available to the Commission at its sixth session. With the support of the Governments of Australia, Canada and Japan, the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat is taking steps to publish in English, French and Spanish the United Nations International Study on Firearm Regulation, which will include information provided by 69 Governments. The study will be issued as a United Nations publication.[1]

3. The Centre is continuing to update the database on the regulation of firearms, which is available on the World Wide Web (http://www.ifs.univie.ac.at/~uncjin/firearms/), using information received from Governments. At the end of February 1998, the number of replies rose to 74.

4. Pursuant to Economic and Social Council resolution 1997/28, paragraph 2, the Secretary-General invited Member States to provide the names and addresses of contact persons and organizations responsible for providing relevant information on firearms and enhancing the existing database on firearms. Besides those countries that had already reported their contact points in their replies to the survey used to prepare the study on firearm regulation, the Governments of the following countries provided that information separately:

Belgium, Bulgaria, Cook Islands, Denmark, Finland, Kenya, Liechtenstein, Lithuania, Madagascar, Netherlands, Philippines, Russian Federation, Samoa, Sweden, Turkey and United Kingdom of Great Britain and Northern Ireland.

II. REGIONAL WORKSHOPS ON FIREARM REGULATION

5. Pursuant to Economic and Social Council resolutions 1996/28 and 1997/28, four workshops on firearm regulation were held between September 1997 and January 1998: in Africa, the Americas, Asia and Europe. Each workshop was based on a specially developed and regionally adjusted training course syllabus that contained case studies and provided for the possibility of practical interaction among the workshop participants. The workshops were conducted with the assistance of a consultant who placed the results of the United Nations International Study on Firearm Regulation in the context of each region with a view to maximizing the synergy of the workshops, leading to better bilateral and multilateral law enforcement and other practical cooperation.

6. The regional workshop on firearm regulation in Europe was held at Ljubljana from 22 to 26 September 1997 at the invitation of the Government of Slovenia. Individuals from the following Member States attended the workshop: Albania, Armenia, Azerbaijan, Canada, Croatia, Czech Republic, Finland, France, Greece, Lithuania, Netherlands, Norway, Poland, Slovenia, Spain, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom and United States of America. The European Institute on Crime Prevention and Control, affiliated with the United Nations, the International Criminal Police Organization (Interpol) and the secretariat of the Wassenaar Arrangement of Export Controls for Conventional Arms and Dual-Use Goods and Technologies were also represented. Workshop meetings were attended by representatives of the following non-governmental organizations in consultative status with the Economic and Social Council: International Fellowship of Reconciliation and International Society of Social Defense (special consultative status); and National Rifle Association of America/Institute for Legislative Action and Verification Technology Information Centre (roster A).

7. The regional workshop on firearm regulation in Africa was held at Arusha from 3 to 7 November 1997 at the invitation of the Government of the United Republic of Tanzania. Individuals from the following Member States attended the workshop: Algeria, Benin, Botswana, Burkina Faso, Canada, Côte d'Ivoire, Egypt, Ethiopia, Gambia, Guinea, Kenya, Lesotho, Madagascar, Mali, Mozambique, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. Interpol was also represented. Workshop meetings were attended by representatives of the following non-governmental organizations in consultative status with the Economic and Social Council: Friends World Committee for Consultation and International Fellowship of Reconciliation (special consultative status); and National Rifle Association of America/Institute for Legislative Action (roster A).

8. The regional workshop on firearm regulation in the Americas was held at São Paulo from 8 to 12 December 1997 at the invitation of the Government of Brazil and the Latin American Institute for the Prevention of Crime and the Treatment of Offenders. Individuals from the following Member States attended the workshop: Antigua and Barbuda, Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Mexico, Paraguay, Peru, Spain, Trinidad and Tobago, United States and Uruguay. Also represented were the United Nations Institute for Disarmament Research, the World Health Organization and Interpol. Workshop meetings were attended by representatives of the following non-governmental organizations in consultative status with the Economic and Social Council: Friends World Committee for Consultation, International Fellowship of Reconciliation and World Society of Victimology (special consultative status); and Congress of Racial Equality, National Rifle Association of America/Institute for Legislative Action and Verification Technology Information Centre (roster A).

9. The regional workshop on firearm regulation in Asia was held at New Delhi from 27 to 31 January 1998 at the invitation of the Government of India and the National Institute of Criminology and Forensic Science of the Ministry of Home Affairs. Individuals from the following Member States attended the workshop: Australia, China, Fiji, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Mongolia, New Zealand, Philippines, Qatar, Republic of Korea, Russian Federation, Samoa, Singapore, Sri Lanka, Thailand and Viet Nam. Also represented were the United Nations Institute for Disarmament Research, Interpol and the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders. Workshop meetings were attended by representatives of the following non-governmental organizations in consultative status with the Economic and Social Council: International Fellowship of Reconciliation (special consultative status); and National Rifle Association of America/Institute for Legislative Action (roster A).

10. The workshops reviewed regional developments and priorities of firearm regulation. They also reviewed a number of issues raised in the draft United Nations international study on firearm regulation. The workshops focused on issues concerning firearm legislation and on the transnational aspects of illicit trafficking in firearms (see annex I). The workshops also provided forums in which Governments could share information in the field of firearm regulation and create common substantive reference points to enable the relevant authorities of each Government to further develop cooperation with their counterparts in other countries.

A. Main results of the workshops

11. The workshops contributed to a common understanding of the issues involved in national legislation on firearm regulation through presentations, case studies, information exchanges and discussions. It was noted that it was important to bear in mind the existing policy of each country, which was based on its unique historical and cultural background. The main issues discussed at the workshops are presented below.

1. Purposes for owning firearms

12. The workshops considered the purposes for owning firearms on the basis of existing regulations. Participants recommended that ownership of firearms should be authorized for specific purposes only and that firearms should be used strictly for the purpose for which they were authorized. The purposes for owning firearms included:

(a) *Sports*. The workshops recommended that there should be restrictions regarding the type and kinds of firearms used in sports. The workshops also recommended that those applying for authorization to use firearms for sporting purposes should leave their firearms in the safe storage facilities of the sporting clubs;

(b) *Game and hunting*. The workshops suggested that restrictions for transportation of firearms used for hunting and the perimeters of hunting grounds should be specified. The need to restrict firearm use for that purpose in order to protect wildlife was also discussed;

(c) *Protection of life and property*. The many suggestions made by participants on the use of firearms to protect life and property included the following: persons applying for authorization to use firearms for personal protection should be obliged to establish real and serious reasons for their use; civilians should be allowed to carry firearms on the premises of their own property and with restrictions in public areas; and only smooth-bored weapons are to be allowed. It was strongly suggested that the word "need" should be defined. The opinion was expressed that only when a State could not protect its citizens adequately did they have a right to possess firearms. There was considerable discussion on the subject but consensus was not reached;

(d) *Collections*. The workshops noted several suggestions made by participants, including the following: antique firearms manufactured before a certain year should be excluded from the regulations; firearms in private

collections should be made unusable; and private collections of fully functional firearms should be prohibited and collections of such firearms should be limited only to museums;

(e) *Private security*. Participants suggested that if reasonable need could be established, corporate ownership of firearms for the purpose of private security should be considered.

2. Conditions for the ownership or possession of firearms

13. The workshops reviewed the conditions for applicants for possession or ownership of firearms. The elements considered included the following: age; establishing necessity; knowledge of use of firearms; having a prior criminal record, with the seriousness of the crime being clearly specified; having a prior record of drug and/or alcohol abuse; having a prior record of domestic violence; mental fitness; and physical fitness. There were also suggestions to consider the following elements: payment of all taxes; community approval through letters of reference and, for a married applicant, approval of his or her spouse; proficiency in the use of firearms; and ability to keep firearms in a safe place. Participants suggested that authorization for firearm ownership or possession should be renewed every year or two.

14. While discussing the above issues, participants expressed concern about the "supply and demand" issues of firearms; that is, if restrictions on obtaining firearms were made too rigid, then the growth of illicit firearms would increase.

3. Procedures for introducing firearm regulations and issuing firearm licences

15. The workshops recommended that procedures for issuing firearm licences should be determined by the level of administrative sophistication that a particular region had attained in that regard. For a region that had in place a limited regulatory system, participants recommended that the firearm regulation process should begin with an intensive media campaign to urge residents to register their firearms. However, for countries that already had in place a developed regulatory process, the following conditions were recommended:

(a) Verification of residency;

(b) Verification of residents' familiarity with firearm legislation and conditions for use through practical measures such as written tests;

(c) Periodic inspection;

(d) Lower and upper age limits for possession of firearms: an upper age limit was considered important as age had been found to be associated with both physical and mental abilities. The discussion focused on the frequency with which medical exams should be given to licensees in different age groups. It was recommended that each licensee should be required to undergo a medical examination once every year after reaching the age of 60.

(e) Consideration of regional differences: in some countries with large geographical and cultural differences, a uniform system might produce difficulties in imposing a standard set of regulations and enforcement. Hence, it was recommended that rules should be tailored to local cultural conditions. That meant that there was a need for close cooperation between police for technical and training needs within the country, as well as with neighbouring countries;

(f) Strong emphasis on firearm training: where possible, there should be a system in place for the accreditation of firearm instructors;

(g) Intensive background checks: it was strongly recommended that the background of an applicant for a firearm licence should be checked intensively before the licence was issued;

(h) Limitation of the number of firearms a person could purchase.

16. Accordingly, participants suggested that each applicant for a firearm licence should provide the following: identity card with a photograph; birth certificate; firearm training certificate; proof of payment of the licence fee; fingerprinting record; and results of intensive background checks in the community and at work.

4. Conditions for firearm use

17. The conditions suggested for the use of firearms included the following: complying with restrictions on lending firearms; strictly observing conditions for carrying firearms; renewing licences periodically; registering firearms; obtaining an insurance policy for hunting to cover firearm accidents or misuse; and establishing real and serious reasons for requesting authorization to use firearms for personal protection.

5. Handling, storage and carrying of firearms

18. The issue of storage of firearms surfaced repeatedly in the discussions. Participants recommended that fulfilling safe storage requirements should be made a prerequisite for issuing a licence. The need for licensees to be educated on precautions regarding where and how to keep firearms (e.g. in cars), in addition to the need to be trained in the use of firearms, was emphasized.

6. Better control of missing, illegal or stolen firearms

19. Essential elements recommended for firearm control included regular inspection, proper supervision, periodic audits and prosecution for negligence.

7. Firearm violations

20. Discussions on firearm violations led to the identification of the following types of infraction: failure to follow regulations; and involvement in firearm-related crime. Recommended measures ranged from forfeiture of the firearm licence to severe penal sanctions.

8. Recovering and removing illegal firearms

21. The workshops suggested massive national campaigns to urge citizens to surrender their illegal firearms. Suggestions for recovering and removing such firearms included the following:

(a) Amnesty programmes: the surrender of illegal firearms with immunity from prosecution, through legislation;

(b) Payment for the surrendered firearms (buy-back programmes);

(c) Destruction of surrendered or confiscated firearms;

(d) Prohibition of private firearm collections and limiting collections of firearms to museums.

22. Emphasis was placed on cooperation with other countries in investigating and gathering evidence in order to retrieve stolen or hidden caches of firearms. Such cooperation could be facilitated by the following: entering

into bilateral or multilateral treaties; sharing technical information; participating in joint operations; and using Interpol to facilitate the exchange of information.

9. Firearm safety: public awareness and education

23. Participants recommended a well-developed programme to increase public awareness and promote public education concerning firearm safety. It was emphasized that the elements on which the success of such a public awareness programme depended included the following:

(a) Tailoring the programme to firearm licence holders, prospective applicants of firearm licences and unlicensed owners of firearms;

(b) Having a comprehensive understanding of the nature of the problem, supported by statistics on firearm-related mortality rates and the social cost of injuries and deaths caused by firearms and comparing those figures with those of neighbouring States;

(c) Prioritizing goals, developing appropriate strategies and establishing effective programmes;

(d) Discouraging the possession of firearms, but allowing the possession of a single firearm as an alternative;

(e) Involving the public in focal groups;

(f) Utilizing training programmes as an effective way to achieve goals, involving firearm users, the police, the judiciary, social and medical professions, women's groups and victim groups; and developing training programmes in schools similar to those on traffic safety;

(g) Using the media as an ally to promote public awareness; and involving television and newspapers in programmes to promote public awareness, focusing on safety or on removing illegal and unsafe firearms;

(h) Highlighting the role of community policing, letting law enforcement officers work with the public by conducting seminars, and encouraging citizens to cooperate with law enforcement officers (as in neighbourhood watch programmes, seminars for the public in the area of identification of weapons and ammunition, and incentives to the public to report illegal activities); essentially, empowering people to help improve their lives;

(i) Using citizens' volunteer activities; conducting symposia at the grass-roots levels;

(j) Exchanging information between the public and officials; establishing a home page on the Internet; preparing brochures with illustrations to reach a wider audience based on levels of education; and providing safety tips and other information in the licence application form;

(k) Focusing on families, paying special attention to the views of children and adolescents on firearms; and focusing on families at risk of being victimized by firearms (e.g. domestic violence, neighbourhood violence);

(l) Making periodic evaluations of the programme.

10. Definition of firearms

24. The need for an adequate definition for firearms was mentioned on many occasions during the workshops. The opinion was expressed that the definition was not clear. Participants suggested that the definition established by the Organization of American States (OAS), which included ammunition and explosives, was comprehensive and thus should be used as a framework. The opinion was also expressed that failure to include ammunition and explosives would make for an incomplete portrayal of the seriousness of the problem.

B. International cooperation in combating illicit trafficking in firearms

25. Illicit trafficking in firearms was considered to be a major problem that required immediate action in all four regions in which the workshops were held. Participants stressed that the problem was beyond the scope of a domestic issue; thus, action coordinated at the international level was necessary.

1. Sharing of information

26. The representative of Interpol emphasized that sharing information was a means of exploring areas of cooperation. The role of Interpol as a facilitator of information exchange was outlined. The representative of Interpol used case studies to explain various technical tools and databases such as the Interpol Weapons and Explosives Tracking System (IWETS), which assisted member States in tracing initiatives.

2. Technical issues of firearm ballistics and firearm tracing

27. A presentation on the technical issues of firearm ballistics and firearm tracing was followed by a discussion on approaches to exchanging information and the need for forging new technologies. The latest data management and analysis system programs, such as the Integrated Ballistic Identification System (IBIS) of the United States and the Firearm Registration Direct Entry System (FREDES) of Canada, were introduced.

28. The importance of defining and classifying firearms to facilitate easier communication between countries was emphasized by participants. It was stated that even countries sharing the same language encountered problems of communication. Some participants agreed that establishing a common set of vocabulary was essential not only in assisting law enforcement officers in tracing and identifying firearms in investigations, but also in legal and judicial matters.

3. Other related complementary regional and international initiatives on firearm regulation

29. Several regional or interregional successful initiatives on firearm regulation were discussed. The initiatives included the following:

(a) Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, adopted by OAS;

(b) Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition, approved by the Inter-American Drug Abuse Control Commission (CICAD) of OAS;

(c) Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at the common frontiers (Schengen Agreement of 14 June 1985);[2]

(d) Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

30. Participants agreed that the interregional nature of illicit trafficking in firearms limited the effectiveness of regional efforts. They stressed that there was a need to expand those efforts to include efforts at the interregional level. Accordingly, participants strongly suggested initiatives similar to those of OAS could be taken within the United Nations for the benefit of all Member States.

C. Involvement of civil society

31. In accordance with Economic and Social Council resolution 1997/28, paragraph 6, representatives of interested non-governmental organizations attended the workshop meetings, except where sensitive law enforcement issues were discussed, and made a statement on subjects covered in the agendas.

32. Statements made by representatives of non-governmental organizations reflected various views in civil society. Some were based on the views of victims of firearm-related crime and of citizens emphasizing freedom from fear of crime, in particular freedom from fear of firearm-related violence, calling for tighter control on firearm ownership in general. Some were representing the interests of owners of firearms for sporting, hunting and collecting purposes, claiming that action against criminal misuse of firearms should not impede, prevent or discourage the lawful and legitimate use of firearms, whereas some were representing firearm owners who were of the opinion that appropriate control of firearms and their owners was necessary to make the owners more responsible and personally accountable for any damage done with the firearms. Some of those organizations regarded firearm regulation as an important human rights issue, whereas others saw it as an issue of national sovereignty. Some approached it from the aspect of crime prevention; others approached it from the aspect of non-proliferation of small arms in conflicts and post-conflict situations, or international security.

33. In addition to those non-governmental organizations in consultative status with the Economic and Social Council whose representatives made statements at the workshops, representatives of the following non-governmental organizations provided comments and views on the issue: International Council of Women and World Confederation of Labour (general consultative status), Asia Crime Prevention Foundation, International Association of Judges, International Institute of Humanitarian Law, Penal Reform International and World Society of Victimology (special consultative status); and Defense for Children International Movement (roster A). Those non-governmental organizations expressed their support for the development of the declaration of principles described in paragraph 34 below.

D. Views on the development of a declaration of principles

34. Pursuant to Economic and Social Council resolution 1997/28, paragraph 6, the Secretary-General included in the agendas for the workshops the possible development of a United Nations declaration of principles, based on the regulatory approaches suggested by the Council in that resolution. The views of Governments on that subject, provided orally or in written form, reflected the results of the discussions described in paragraphs 11-30 above. The views of the non-governmental organizations attending the workshops are described in paragraphs 31-33 above.

35. Pursuant to Economic and Social Council resolution 1997/28, paragraph 7, the Secretary-General sought the views of Member States, intergovernmental and non-governmental organizations and other entities on the same issue. In addition to the views of Governments that had been brought to the attention of the Commission at its fifth session in pursuance of Council resolution 1995/27, section IV (E/CN.15/1996/14 and Corr.1), more recent views were provided by the Governments of Germany, Spain and the Sudan.

36. Views on the issue were also provided by the secretariat of the Wassenaar Arrangement.

37. The elements for the possible development of a declaration of principles, based on the views provided, ar presented below.

1. Legislation on firearms

38. Recognizing that States have developed different cultural and historical uses for firearms and that thei sovereign rights to enact their own regulations on firearms should be respected, Member States should:

(a) Seek to promote the safety and well-being of their citizens and all persons within their jurisdiction in order to ensure freedom from fear of crime, in particular, freedom from fear of firearm-related violence;

(b) Take appropriate measures to regulate firearms, including those suggested in Economic and Socia Council resolution 1997/28, paragraph 5;

(c) Seek to promote public awareness, in order for their citizens to acquire proper knowledge of firearms

2. Illicit trafficking in firearms

39. Recognizing that the fight against illicit trafficking in firearms is beyond the scope of a domestic issue that internationally coordinated action is immediately required to deal with it and that such action is not intende to discourage or diminish what Member States regard as lawful ownership and use of firearms, Member State should:

(a) Fight against illicit trafficking in firearms by developing standard systems for firearm identificatio and a stronger international regime for import and export licensing of firearms;

(b) Promote bilateral, multilateral, regional and global law enforcement cooperation and assistance including, as appropriate, information exchange on firearm tracing, and technical cooperation to ensure that a Member States have sufficient capacity in this area;

(c) Invite Interpol to strengthen its role in facilitating the sharing of data and other information amon States for international cooperation in the fight against illicit trafficking in firearms.

E. Evaluation

40. At the end of the workshops, each of the participants (a total of 149 experts from 79 countries) wa requested to fill out an evaluation form. The mean average ratings (on a 16-point scale) given by the participant of the workshops were as follows:

Overall impression of the workshop	13.15
Usefulness of the workshop	13.83
Fulfilment of the workshop objectives	12.94
Satisfaction with the content	13.17
Quality of the materials	12.02
Services provided by the Secretariat	13.88
Administrative arrangements	13.81

41. In addition to their intended purpose of exchanging data and other information on firearm regulation, the workshops achieved other important goals, such as the following:

(a) Enabling the results of the United Nations International Study on Firearm Regulation to be put into practice, including by providing possibilities to fulfil technical assistance needs, by placing the results in a regional context, particularly in African and Asian countries;

(b) Providing a platform for the development of a common understanding related to the growing need for comprehensive binding legal instruments on the illicit movement of firearms throughout the world, such as the OAS Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, together with the CICAD Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition;

(c) Providing an opportunity to informally discuss the possible expansion of the United Nations work in firearm regulation to include the area of criminal use of and trafficking in explosives.

III. OTHER RELEVANT INITIATIVES

A. Denver Summit of the Eight

42. In their communique issued at the conclusion of the Denver Summit of the Eight, on 22 June 1997, the heads of State or Government of the seven leading industrial countries (Canada, France, Germany, Italy, Japan, United Kingdom and United States) and the Russian Federation expressed their will to combat illegal firearms trafficking by considering a new international instrument. They stated that they would seek to adopt standard systems for firearms identification and a stronger international regime for import and export licensing of firearms.

B. Organization of American States

43. On 13 November 1997, the General Assembly of the Organization of American States, at its twenty-fourth special session, adopted the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials. The purpose of the Convention is to prevent, combat and eradicate illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials and to promote and facilitate cooperation and the exchange of information and experiences among the States parties to the Convention in order to pursue the above-mentioned goals. The suggested strategies include marking firearms, introducing stringent export and import and transit authorizations, strengthening controls at export points, confiscating illegally manufactured or illegally transported firearms and ammunition and exchanging information.

44. On 4 November 1997, CICAD, at its twenty-second regular session, approved the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition. The purpose of the Model Regulations is to set out, for use on a multilateral basis, harmonized measures and a harmonized system of procedures for monitoring and controlling the international movement of firearms, their parts and components and ammunition, in order to prevent their trafficking and diversion to illicit channels. The Model Regulations are an essential building block of the OAS Convention, focusing on improving the control of the legal international movement of firearms, their parts and components, and ammunition.

C. International Criminal Police Organization

45. On July 1997, Interpol, at its sixty-sixth General Assembly, adopted a resolution on the manufacture, use and control of firearms and reaffirmed its continuous efforts to fight against the criminal misuse of firearms.

46. Pursuant to Economic and Social Council resolution 1997/28, paragraph 10, Interpol informed the Centre for International Crime Prevention that it planned to implement a survey on its members' capacities in tracing firearms and ballistic testing, to compile, to the extent possible, an index of common terms concerning firearms and to provide the results to the Commission.

D. Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

47. According to the mandate of the Wassenaar Arrangement, which is to prevent the destabilizing build-up of military capabilities in order to contribute to regional and international security and stability, the States participating in the Wassenaar Arrangement control the export of most firearms at the national level. The Wassenaar munitions list includes all firearms and their ammunition, with the exception of collectors' items, sport and hunting shotguns and other firearms not considered to be militarily significant. The scope of the Wassenaar Arrangement includes a voluntary exchange of information on arms transfers. The Wassenaar Arrangement also establishes agreements and procedures that, although not directed at the prevention of illicit trafficking in firearms, may be useful in considering the development of regulations and improving the collection and sharing of information for the purpose of combating illicit trafficking in firearms.

E. Panel of Governmental Experts on Small Arms

48. The General Assembly, in its resolution 52/38 J, welcomed the submission of the report of the Secretary-General prepared with assistance of the Panel of Governmental Experts on Small Arms (A/52/298, annex), which contained measures to reduce excessive and destabilizing accumulation and transfer of small arms and light weapons in specific regions of the world and to prevent such accumulations and transfers from occurring in future. The Assembly, in the same resolution, endorsed the recommendations contained in the report and requested the Secretary-General to implement the relevant recommendations, in particular to initiate a study on the problems of ammunition and explosives in all their aspects, as early as possible, within available financial resources, and in cooperation with appropriate international and regional organizations where necessary.

IV. CONCLUSION AND PROPOSAL FOR CONSIDERATION BY THE COMMISSION

49. The United Nations International Study on Firearm Regulation made possible the successful compilation and dissemination of extensive information on the subject, which is both sensitive and, from the standpoint of crime prevention and public safety, important.

50. Using the draft of the study as a basis for considering measures to regulate firearms, the regional workshops on firearm regulation developed, to some extent, a common understanding of the national legislative issues and transnational aspects of illicit trafficking in firearms. Information useful to criminal justice administrators working in the field of firearm regulation was gathered at the workshops.

51. Through the discussions at the four regional workshops and from the views provided by Governments and intergovernmental and non-governmental organizations, it became apparent that the national legislative issues should be discussed bearing in mind the unique cultural, historical and political background of firearm

ownership and use in each Member State, whereas illicit trafficking in firearms should be considered a major problem that requires immediate action coordinated at the international level. In both cases, the development of measures to deal with the problems will require maximum synergy involving Member States, the criminal justice community and civil society.

52. The study was used as a diagnostic tool to move the firearm regulation project from the analytical stage to the technical cooperation stage. There may now be a need to develop technical assistance projects in the field, including in tracing firearms and sharing relevant information for the purpose of combating illicit trafficking in firearms.

53. Since ammunition is a part of explosives, it was strongly recommended by participants in the regional workshops that the study should also cover the question of criminal use and trafficking of explosives and their components and parts in the context of organized transnational crime.

54. In the light of the above and subject to the availability of additional resources, the Commission may wish to consider the following action:

(a) Continuing the collection of data and the dissemination of information on firearm regulation in the context of organized transnational crime, including reviewing the survey format with a view to extending its scope to include illicit trafficking in and criminal use of explosives;

(b) Developing a training manual on firearm regulation for criminal justice administrators, based on data, other information and materials collected on the occasion of the four regional workshops, and disseminating it through criminal justice educational institutions, including police colleges, in Member States;*

(c) Developing technical assistance programmes in order to ensure that Member States have the capacity to cooperate adequately with each other in the area of firearm regulation, *inter alia,* in tracing firearms and in sharing relevant information for the purpose of combating illicit trafficking in firearms.

Notes

[1]Sales No. E.98.IV.2.

[2]*International Legal Materials*, vol. XXX, No. 1 (1991).

*A suggested outline for such a manual is contained in annex II to the present report.

Annex I

PROGRAMME OF THE REGIONAL WORKSHOPS ON FIREARM REGULATION

1. Opening of the workshop and organization of work.

2. Overview and discussion of the United Nations International Study on Firearm Regulation: contributions from the countries in the region.

3. National legislation and regulations relevant to firearm regulation and collection of comparable information.

4. Relevant initiatives for firearm regulation at the regional and interregional levels:

   (a) Information exchange (e.g. International Criminal Police Organization (Interpol));

   (b) Technical information: development in firearm identification system;

   (c) Standardizing descriptors (e.g. developing common terminology).

5. The situation with regard to transnational illicit trafficking in firearms:

   (a) Smuggling of and transnational illicit trafficking in firearms;

   (b) Bilateral, regional or multilateral agreements or arrangements on combating illicit trafficking in firearms;

   (c) National or international arrangements to control the legitimate movement of firearms;

   (d) Other relevant initiatives.

6. Statements of representatives of interested non-governmental organizations, in accordance with paragraph 6 of Economic and Social Council resolution 1997/28.

7. Possible development of a United Nations declaration of principles based on, *inter alia*, the following regulatory approaches:

   (a) Regulations relating to firearm safety and storage;

   (b) Appropriate penalties and/or administrative sanctions for offences involving the misuse or unlawful possession of firearms;

   (c) Mitigation of, or exemption from, criminal responsibility, amnesty or similar programmes determined by individual Member States to be appropriate to encourage citizens to surrender illegal, unsafe or unwanted firearms;

   (d) A licensing system, including the licensing of firearm businesses, to ensure that firearms are not distributed to persons convicted of serious crimes or to persons who are prohibited under the laws of the respective Member States from owning or possessing firearms;

(e) A record-keeping system for firearms, including a system for the commercial distribution of firearms and a requirement for appropriate marking of firearms at manufacture and at import, to assist criminal investigations, discourage theft and ensure that firearms are distributed only to persons who may lawfully own or possess firearms under the laws of the respective Member States.

8. Closure of the workshop.

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OUTLINE OF A TRAINING MANUAL

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A. Firearm-related violence: a worldwide concern

1. Inadequate firearm regulations and enforcement
2. Proliferation of small arms in post-conflict situations
3. Narcotics and firearms

B. Background for the manual

1. Legislative background
2. Substantive background

C. Focus of the manual

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A. Purpose

1. Culture of firearm ownership
2. Sporting
3. Business
4. Collecting

B. Establishing suitability of ownership and use

1. General conditions
2. Psychological tests
3. Other conditions

C. Establishing conditions for use

1. Training
2. Storage
3. Carriage
4. Transportation

D. Duration of licenses

Chapter II. Initiatives to improve public safety with regard to firearm-related violence

A. Improving safety (e.g. safety features on firearms)

B. Pursuing expired licences

C. Appropriate penalties and/or administrative sanctions for offences involving the misuse or unlawful possession of firearms

D. Public awareness programmes

1. Removal of extra firearms or amnesty programmes
2. Role of the media in reducing firearm-related violence

Chapter III. Record-keeping system for firearms

A. Record-keeping system for ownership and use

B. Record-keeping system for manufacturers

C. Record-keeping system for distributors

D. Marking and tracing firearms for investigative purposes

Chapter IV. Smuggling and illicit trafficking in firearms

A. Import and export regulations

B. Extent of smuggling of and illicit trafficking in firearms

C. Efforts to curb illicit trafficking in firearms

Chapter V. International cooperation

A. Need to establish cooperative efforts

B. Identification of areas that need bilateral, regional and international cooperation

C. Information-sharing

D. Technical assistance

E. Role of existing international organizations (e.g. the International Criminal Police Organization (Interpol))

F. Examples of regional and interregional cooperative efforts

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Item 6 (a) of the provisional agenda*

INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

IMPLEMENTATION OF THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN AGAINST ORGANIZED TRANSNATIONAL CRIME: QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME, AND OTHER POSSIBLE INTERNATIONAL INSTRUMENTS

Report of the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime (Warsaw, 2-6 February 1998)

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INTRODUCTION

1. The General Assembly, in its resolution 49/159 of 23 December 1994, approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex) adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994, and urged States to implement them as a matter of urgency. The General Assembly, in its resolution 51/120 of 12 December 1996, requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime. At the recommendation of the Commission and the Economic and Social Council, the General Assembly, in its resolution 52/85 of 12 December 1997, decided to establish an inter-sessional open-ended intergovernmental group of experts of the Commission, for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime, which would submit a report thereon to the Commission at its seventh session. The Assembly welcomed the generous offer of the Government of Poland to organize and host a meeting of that group. Pursuant to Assembly resolution 52/85, the meeting was held at Warsaw from 2 to 6 February 1998. In addition to the background documentation presented by the Secretariat, the Max Planck Institute for Foreign and International Criminal Law prepared a comparative study on the elaboration of a preliminary draft of a comprehensive international convention against organized transnational crime, which served as one of the main background papers for the meeting.

I. ORGANIZATION OF THE MEETING

A. Opening of the meeting

2. In her opening address, Ms. Hanna Suchocka, Minister of Justice of Poland, welcomed the participants and expressed deep satisfaction that the meeting attracted such a considerable amount of interest internationally. She recalled that in 1996 Poland had given impetus to the formulation of an international convention against organized transnational crime when the President of Poland presented to the General Assembly his country's proposal to draft such a convention; the draft convention was forwarded to the Secretary-General on 24 September 1996 (A/C.3/51/7).

3. The Minister emphasized that the discussion on the draft convention had started at the informal meeting held at Palermo, Italy, in April 1997 and continued at the sixth session of the Commission, held at Vienna from 28 April to 9 May 1997. The Minister noted that international organized crime, such as money-laundering, illegal sales of firearms, nuclear materials and explosives, illegal trade in cars and works of art, counterfeiting of currency and corruption, posed an ever-increasing threat to the global security of States, led to the destabilization of international relations and undermined national economies, politics, mass media, public administration and legal systems. In conclusion, the Minister expressed her hope that countries interested in cooperating in combating organized crime would show enough goodwill to reach an agreement.

4. On behalf of the Executive Director of the Office for Drug Control and Crime Prevention of the United Nations Office at Vienna, the representative of the Centre for International Crime Prevention thanked the Government of Poland for its generosity in acting as host for the intergovernmental group of experts and provided an overview of the work objectives before that group. He noted that achieving consensus on the elaboration of a new international instrument would assist in overcoming the problems inhibiting inter-State cooperation in criminal matters, such as the issue of sovereignty, the inability of States to collaborate in criminal justice and law enforcement and the diversity of legal systems. He also expressed confidence that the work of the intergovernmental group would lay the basis for a fruitful debate by the Commission on the matter during its seventh session. The wealth of knowledge and expertise, combined with political maturity and mutual understanding of differences, would ensure a successful outcome.

B. Attendance

5. The meeting of the intergovernmental group of experts was attended by representatives of the following States: Algeria, Angola, Argentina, Australia, Austria, Belarus, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Democratic Republic of the Congo, Côte d'Ivoire, Croatia, Denmark, Ecuador, Egypt, Finland, France, Germany, Greece, Indonesia, Islamic Republic of Iran, Italy, Japan, Kuwait, Latvia, Lesotho, Mexico, Morocco, Netherlands, Niger, Paraguay, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Rwanda, South Africa, Spain, Sudan, Swaziland, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam and Zambia. The following intergovernmental organizations also attended: Council of the European Union, European Commission and International Criminal Police Organization. The following specialized agency and United Nations institute were in attendance: Universal Postal Union and United Nations Interregional Crime and Justice Institute.

C. Election of officers

6. The meeting elected the following officers by acclamation:

Chairman:	Zdzislaw Galicki (Poland)
Vice-Chairmen:	Eugenio Curia (Argentina) Luigi Lauriola (Italy) Tahar Fellous (Tunisia)
Rapporteur:	Bahram Badiozzamani (Islamic Republic of Iran)

D. Adoption of the agenda

7. At its first plenary meeting, on 2 February 1998, the intergovernmental group of experts adopted the following agenda:

1. Opening of the meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime:
   (a) General discussion;
   (b) Judicial and police cooperation;
   (c) Scope and application of international cooperation;
   (d) Constituent elements of organized crime;
   (e) Other provisions.
5. Conclusions and recommendations and adoption of the report of the meeting.
6. Closing of the meeting.

8. After the adoption of the agenda, several delegations stated that General Assembly resolutions required the Secretary-General to hold official meetings in all six official languages of the Organization. Those delegations requested that the next intergovernmental meeting should be held according to established rules.

II. SUMMARY OF THE DISCUSSION

9. The general discussion held on the first day of the meeting was characterized by the eagerness of all delegations to comply with the mandate of the intergovernmental working group, as determined by the General Assembly in its resolution 52/85. Furthermore, all delegations wished to make constructive contributions to the

attainment of the common goal of effective and decisive action against organized transnational crime without further delay, as an effective United Nations instrument addressing organized transnational crime could be of value. In that context, delegations focused on identifying areas of emerging consensus and on the best ways to consolidate such consensus. It was recognized that differences in approaches to the various issues to be covered under the convention continued to exist. However, it was agreed that all possible efforts should be made to overcome such differences and find solutions to conceptual and other problems. Interested parties must begin with an agreement on principles and guidelines for a convention that would focus on the prevention of organized crime.

10. There was broad consensus on the desirability of a convention against organized transnational crime. There was much to be gained from this international legal instrument, which would not only build on, but also go beyond, other successful efforts to deal with pressing issues of national and international concern in a multilateral context. There was unreserved confirmation of the commitment of the international community to devote priority attention to developing such a convention and ensuring its full implementation. In that spirit, a number of general principles emerged. It was understood that efforts to elaborate the new international convention would be guided by those principles. The main principles emanating from the general discussion, as summarized by the Chairman, were as follows:

(a) While the contours of organized crime were generally understood, there continued to be divergences of a legal nature that made it difficult to reach a comprehensive definition. Engaging in such an endeavour might require considerable time, whereas there was a general feeling of the urgency of action in the direction of elaborating the new convention. Organized crime continued to evolve and manifest itself in different ways. As there was a general understanding of criminal organizations, efforts to determine the scope of the convention should build on that understanding, focusing action under the new convention against those groups.

(b) Certain States were of the view that attempting to list all possible criminal activities in which criminal organizations were likely to engage would be difficult and might lead to a convention that was too narrow. Such an approach entailed two major risks. First, it would *ab initio* prejudice the applicability and effectiveness of the convention, as a list could not be all inclusive and would most probably exclude emerging forms of criminal activity. Secondly, it would present considerable difficulties with regard to other provisions of the convention, as specific crimes often demanded specific responses. The need to deal with specific offences might be accommodated by additional protocols, which could be negotiated separately, not affecting the comprehensiveness of the convention or it operability and effectiveness. Furthermore, it was observed that such an approach might prove more conducive to a more expeditious negotiating process that would make the new convention a reality in a shorter period of time.

(c) An alternative approach that was proposed might be based on the seriousness of the offence, which might be determined on the basis of the penalty foreseen in national legislation and a requirement that the offence be committed in connection with a criminal organization, association or conspiracy. That approach was not free of difficulties, as the concept of seriousness was not as meaningful in all national systems. However, there was merit in further considering such an approach as a potential solution, especially combining it with a focus on the organized nature of the offence in question, as well as looking at elements that would necessitate international cooperation, including its transnational reach.

(d) There was agreement that the convention should include practical measures of international cooperation, such as judicial cooperation, mutual assistance in criminal matters, extradition, law enforcement cooperation, witness protection and technical assistance. The convention should be a capacity-building instrument for States and the United Nations alike in connection with the collection, analysis and exchange of information, as well as the provision of assistance. Furthermore, the convention should expand the predicate offences for the purpose of action against money-laundering, while it should include provisions creating the

obligation of States to confiscate illicitly acquired assets and regulate bank secrecy. The convention should also include provisions to prevent organized crime, such as measures to reduce opportunities for criminal organizations or limit their ability to engage in certain activities. The convention should have provisions that require legislative action on the part of Governments, in order to facilitate meaningful and effective cooperation. Certain delegations expressed strong opposition to a "serious crimes convention" as opposed to an instrument focused on organized crime.

(e) Other international instruments, especially the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[1] were useful sources of inspiration. They contained provisions of direct relevance to the new convention. Some of those provisions could provide solutions to similar problems, or serve as a point of departure in order to go beyond their scope, taking into account new needs and developments. In addition, the convention should empower the law enforcement authorities of States parties to employ extraordinary investigative techniques (e.g. wire-tapping and undercover operations), consistent with constitutional safeguards.

(f) Finally, the convention should incorporate appropriate safeguards for the protection of human rights and to ensure compatibility with fundamental national legal principles.

11. Having completed the general discussion, the intergovernmental group of experts decided to structure its further work on the basis of the following elements of the convention:

(a) Scope of application;

(b) Domestic obligations:

(i) Criminalization;

(ii) Money-laundering, bank secrecy and confiscation of assets;

(c) Jurisdictional matters;

(d) Judicial cooperation:

(i) Extradition;

(ii) Mutual assistance in criminal matters;

(iii) International confiscation;

(e) Protection of victims and witnesses;

(f) Law enforcement cooperation and exchange of information;

(g) Training and technical assistance;

(h) Prevention;

(i) Role of the United Nations (and other relevant organizations);

(j) Safeguards.

A. Scope of application of the convention

12. Arriving at a comprehensive definition of organized transnational crime, which could be acceptable universally, was considered a difficult task. In that connection, three principal views were expressed. According to the first, a definition of organized transnational crime was necessary and could be achieved. The second view held that organized transnational crime should be left undefined, following the example of other international instruments such as those against terrorist acts, and that the scope of the new convention should be as broad as possible. The issue could be approached in a descriptive fashion, by delineating constituent elements of organized crime. According to the third view, the legal basis of the convention would be the seriousness of the offence, to be determined in accordance with the penalty, combined with the involvement of criminal organizations in its commission and its transnational effects.

13. In an effort to resolve the issue of definition, several delegations advanced the option of elaborating a main convention that could include substantive provisions on the criminalization of money-laundering, criminal associations and conspiracy, modalities of international cooperation, and additional protocols covering specific offences, such as alien smuggling, trafficking in firearms, trafficking in stolen motor vehicles and trafficking in women and children. The understanding was that the main convention would be a free-standing instrument, which would be operative in itself and not dependent on the additional protocols. The protocols could contain obligations to criminalize the specific offences they would cover, as well as specific measures that might be required in relation to those offences. It was noted that such protocols should not duplicate the framework convention and that they could provide for even deeper and more specialized types of assistance and cooperation than would be available under the main convention.

14. In that connection, the intergovernmental group of experts was informed that two proposals for fully-fledged specialized conventions on illegal trafficking in migrants had been submitted by two countries. According to those delegations, the proposals required analysis regarding the elements to be included in the provisions of the main convention and regarding the elements that should be included in a special instrument, which would comprise a common draft of a draft international convention and a draft protocol. The same delegations proposed that procedural arrangements should be made at the seventh session of the Commission in order to allow such an analysis of existing proposals for special conventions. Such procedural arrangements might include establishing an ad hoc working group on trafficking in aliens, which could meet for one or two days.

15. In determining the scope of the convention, it was emphasized that the international community should avoid losing sight of the fact that the stated objective, in accordance with the mandate given by the General Assembly, was to develop a convention against organized transnational crime. In particular, it was stressed that attempts to overcome the difficulties presented by the definition or the overall determination of the scope of the convention should not result in an instrument focused only on international cooperation in criminal matters. Much of the value of the convention lay in the creation of obligations for States to take legislative action at the national level, as well as putting in place the mechanisms required for effective action against organized transnational crime and strengthening their capacity to act and cooperate in that field.

16. The view was also expressed that if the scope were to end up being either too broad or too narrow the convention would be rendered difficult to implement and, consequently, inoperable. Therefore, Governments should make every possible effort to ensure that the appropriate amount of flexibility was maintained, while not neglecting the need to make the new instrument as practical and as responsive to the needs of countries as possible.

17. Several delegations were of the view that the scope of application could vary for different chapters or articles of the convention, according to the nature of the matters covered therein.

18. Some delegations were of the opinion that the convention should cover the issue of links between organized crime and terrorism. In that connection, one delegation considered it useful to include in the preamble of the convention reference to the existing correlation between transnational crime and arms and drug trafficking on the one hand, and on the other the phenomena of terrorism, which were fed by those scourges and networks and benefited from their support and complicity.

B. Domestic obligations

1. Criminalization

19. It was observed that criminalization was one of the most important aspects of the convention. One of the most appreciated values of the new international instrument lay in the creation of obligations of States to take legislative action to ensure that certain forms of conduct would become criminal offences. In that connection, there was general agreement on the need to find appropriate ways in the new instrument to criminalize conspiracy, as well as conduct that consisted in participating and contributing to criminal organizations. All delegations expressed the desire to seek mechanisms that would ensure that this salient feature of organized crime was adequately dealt with. However, it was recognized that it would be difficult for many States to envisage legislation that would make mere participation in, or association with, an organized group a criminal offence. In view of the wish to find a solution to that problem, several delegations pointed out that article 2, paragraph 3, of the International Convention for the Suppression of Terrorist Bombings was a provision that could prove useful in elaborating the new instrument. Furthermore, reference was made to the need to take into account article 3 of the 1988 Convention. The view was also expressed that the modus operandi was an essential element in defining criminal organizations. The usefulness of existing instruments notwithstanding, it was emphasized that the overall objective of the new convention required that efforts be made to find more innovative solutions, which might go beyond present practice.

20. Some delegations suggested that the new convention should include provisions that would require legislative action by States on evidentiary requirements and rules. That action would be designed to benefit other countries as much as those enacting the relevant legislation, with a view to enhancing the ability to investigate, prosecute and adjudicate organized crime. In particular, the importance of requiring States parties to take other domestic measures was stressed, such as (a) enabling law enforcement authorities to utilize special investigative techniques to combat organized crime; and (b) strengthening domestic asset forfeiture regimes (e.g. by allowing for the seizure or forfeiture of instrumentalities and proceeds of crime, by endeavouring to provide for the enforcement of foreign forfeiture orders and by considering the equitable sharing of forfeited assets).

21. In connection with the proposal on criminal liability of corporate persons as contained in the draft United Nations framework convention against organized crime, proposed by the Government of Poland (A/C.3/51/7, annex), some delegations indicated that it was difficult to accept that concept because it was unknown to their domestic legislation.

2. Money-laundering, bank secrecy and confiscation of assets

22. There was general agreement that the convention should create the obligation of States to make money-laundering a criminal offence. In that connection, there was strong conviction that the convention should extend predicate offences as much as possible. While article 3 of the 1988 Convention constituted a major achievement and, thus, a good point of departure, there was agreement that the convention offered the opportunity to go beyond that scope, as well as that of the recommendations of the Financial Action Task Force on Money Laundering.

23. In connection with the issue of money-laundering, it was observed that due account would need to be taken of the work currently under way in the Commission on Narcotic Drugs, in preparation for the special session of the General Assembly on drug control, to be held in June 1998. In that connection, it was recalled that the Commission on Crime Prevention and Criminal Justice would be fully apprised of developments concerning the work of the Commission on Narcotic Drugs, as part of its strategic management and coordination efforts.

24. It was suggested that in elaborating the money-laundering provisions of the new convention, due attention should be paid to the legislative initiative taken in one country to prevent the enjoyment of laundered proceeds by prohibiting inheritance or other conveyance of such proceeds.

25. There was general agreement that the convention should create the obligation of States to take appropriate action to confiscate illicitly acquired assets. It was suggested that relevant provisions in the new convention should extend to instrumentalities of organized crime, as well as to the possibility of enforcement of foreign judgements with respect to confiscation. In the discussion on that subject, the view was expressed that those provisions should be complemented by measures to allow the return of confiscated assets to the country of origin. In that connection, the issue of asset sharing was also discussed, especially in consideration of the need to take into account costs incurred in investigating and prosecuting organized crime cases, including the process of confiscation itself. A solution to the question might be found in a closer examination of the issues involved and in a balanced combination of the various available options. It was stressed that the rights of victims should not be neglected when approaching the issues of confiscation and asset sharing or return.

26. It was pointed out that there was a need to adopt legislative and regulatory measures that would limit financial secrecy in order to promote effective money-laundering control and international cooperation. In that connection, it was suggested that the convention should include a provision to lift bank secrecy regarding the investigation of criminal organizations.

C. Jurisdictional matters

27. It was acknowledged that the various legal systems took different approaches in establishing and exercising jurisdiction. However, the special nature and complexity of organized transnational crime demanded that the collective legal thinking of States should be challenged to find ways in the context of the new convention to prevent such differences from impeding effective action.

28. One delegation suggested that the new convention should provide for the establishment of jurisdiction on the basis of the nationality of the victim of an offence.

29. Concern was expressed at the fact that provisions for the establishment of universal jurisdiction on the basis of nationality would not be possible under the legal systems of many countries, which based their jurisdiction provisions on the principle of territoriality, particularly of the obligation to criminalize extended to a wide class of conduct. Pursuing an approach that would establish jurisdiction with respect to those offences that States would be required to criminalize under the convention might be desirable. Further discussion centred on the risks that concurrent jurisdiction might entail if the new convention were to include provisions that would lead to the establishment of jurisdiction by more States over the same offence or offender. Concern was expressed, in that connection, about subjecting individuals to double jeopardy in such cases. It was pointed out, however, that concurrent jurisdiction might not be a negative development, as it would indicate the interest of numerous States to deal with specific problems. In addition, conflicts of jurisdiction were rather rare and were invariably resolved at the practical level by an eventual determination of which jurisdiction would be ultimately exercised on the basis of the chances for successful prosecution and adjudication of the particular case.

D. Judicial cooperation

1. Extradition

30. In elaborating the extradition provisions of the convention, it was deemed appropriate that they should be based on article 6 of the 1988 Convention, article 6 of the Polish draft* and article 5 of the United States draft.*

31. Extradition was considered one of the principal tools of international cooperation in the context of the new convention. The convention could create a general obligation to extradite in a number of ways. The first issue would necessarily be to which offences the provisions on extradition would apply, an issue linked with the scope of the convention. In that regard, a number of States were of the view that such provisions should relate only to the offences that the parties to the convention would be obligated to criminalize (e.g. money-laundering and criminal association or conspiracy) or, potentially, to offences that would be criminalized by additional protocols. Another option was to make extraditable under the convention all offences covered by the provision on its scope of application. Many States noted that a dual criminality requirement would have to be incorporated for criminal association or conspiracy to commit "serious" crimes, and if extradition were to be contemplated for an even broader class of serious crimes.

32. States could be required to include certain offences in their bilateral extradition treaties. As to whether the new convention could properly form the basis for a request for extradition where no bilateral extradition treaty existed between two States parties, one option would be to permit States parties to use the convention for that purpose where deemed appropriate in the discretion of the two States involved. Another option would be to exclude such a provision altogether, particularly if the obligation to extradite related to a wide range of criminal conduct.

33. A number of States raised concerns about the appropriateness of a provision according to which States that did not require a treaty basis for extradition would be obligated to include certain offences as extraditable offences under applicable domestic legislation, if such a provision would pertain to a wide range of criminal conduct.

34. As to the creation of the duty to extradite or prosecute, there were a number of options regarding the circumstances under which such an obligation could be created. Since the potential scope of the convention could be wide, an obligation to extradite or prosecute any offence under the convention could require States to establish jurisdiction over a large number of offences on the basis of, *inter alia*, universality or the nationality of the offender. Accordingly, a number of States supported a narrower obligation, such as imposing the duty to prosecute only where extradition was denied on grounds of nationality and only when the requesting State asked the State of nationality to prosecute. Several delegations noted that the duty to extradite or prosecute would need to be included also in cases where extradition was refused on the grounds of the imposition of the death penalty in the requesting State.

35. The question of extradition of nationals was the subject of considerable discussion. It was noted that while differences in approaches persisted on that question between civil and common law systems, the globalization of crime required innovative thinking with regard to the principle of sovereignty, which the refusal of extraditing nationals was deemed to safeguard. Traditional views needed to be reviewed in the light of the need to afford adequate protection to countries and citizens from the growing threat of organized transnational crime.

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*See General Assembly resolution 52/85, paragraph 16 (a).

36. Various options were considered. One option was to include provisions that would require States to extradite their nationals. However, a number of countries had fundamental legal principles precluding extradition of nationals. Other options supported by a wider group of States envisaged (a) permitting States to exercise discretion in determining whether to extradite their nationals (similar to the approach taken in article 6, paragraph 5, of the 1988 Convention); (b) permitting States to elect to temporarily surrender their nationals on condition that any sentence be served in the State of nationality; (c) obligating those States in which extradition or temporary surrender was not possible to effectively implement the rule of *aut dedere aut judicare*, by, *inter alia*, undertaking the commitment to accord such prosecutions the same level of priority and devote the same human resources as to serious offences committed in their territory, and providing sufficient financial resources to carry out an effective investigation and prosecution; and (d) obligating States that do not extradite or temporarily surrender their nationals to periodically review their domestic legal schemes in order to determine whether extradition or temporary surrender of nationals should be permitted henceforth. The relevant provisions of the European Convention on Extradition,[2] as well as recommendation 10 of the recommendations elaborated and endorsed by the Senior Experts Group on Transnational Organized Crime,* should be taken into account in finding a solution.

37. A large number of delegations favoured incorporation in the convention of safeguards, such as protecting individuals from being extradited where the requesting State's prosecution was politically motivated, or where there were sufficient grounds to believe that extradition would facilitate prosecution or punishment on grounds of race, gender, religion or nationality (in a manner similar to that provided for in article 6, paragraph 6, of the 1988 Convention or the relevant provisions of the Model Treaty on Extradition (General Assembly resolution 45/116, annex)). It was noted that in evaluating a request for extradition, States should be entitled to consider whether the request was politically motivated. Given that there was as yet no clear consensus on the offences within the scope of the convention, the political offence doctrine was reserved for future discussion.

38. In addition, a number of delegations were attracted to the idea of a provision that would enable States to apply grounds for refusal of extradition set forth in their bilateral treaties or domestic laws, as applicable (similar to the approach taken in article 6, paragraph 5, of the 1988 Convention).

39. Given that there was as yet no clear consensus on the scope of the cooperation obligations imposed in that area, the appropriateness of ruling out application of the political offence exception was reserved for future discussion.

2. Mutual assistance in criminal matters

40. Article 7 of the 1988 Convention was considered to be a useful point of departure in elaborating the provisions on mutual assistance of the new convention, with further improvements regarding the level of detail and introduction of new forms of assistance. The pertinent recommendations of the Senior Experts Group would serve as an additional source.

41. As to the scope of mutual assistance, various options were considered, including assistance to be provided for dealing with all serious crimes, as defined by a penalty test, or only for serious crimes pertaining to activities of a criminal group, association or conspiracy, or providing for one of the foregoing, with the requested State having discretion to expand or narrow the scope of assistance it was willing to provide. Some delegations were of the view that limiting the scope of the relevant provisions might prevent States from obtaining cooperation from another State at the early stage of an investigation, or could be used by defence counsel as a means to obtain exclusion of evidence obtained through the convention. Other delegations considered that other

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*See General Assembly resolution 52/85, paragraph 16 (a).

provisions could be drafted to address those specific concerns, but that an article obligating States to provide mutual assistance regarding all serious crimes could result in an unmanageable increase in the volume of requests, which would not measurably aid in the fight against organized crime.

42. Some delegations advanced the view that the new convention should include a provision according to which mutual assistance would be provided even in the absence of dual criminality. Other delegations expressed concern about that approach. While the provision of assistance in the form of information might be feasible, provision of other assistance might not. For example, with respect to search and seizure, dual criminality would always appear to be required. In addition, given the potentially wide scope of the obligation to cooperate, certain forms of assistance might not be possible.

43. On the issue of execution of requests, several suggestions were put forward. One option would be not to have detailed provisions on the execution of mutual assistance requests, except for the waiver of bank secrecy. In addition to the exclusion of bank secrecy, it was suggested that some or all of the following provisions relating to the execution of requests could be considered: (a) designation of central authorities, such as those in article 7, paragraph 8, of the 1988 Convention, or an even stronger central authority (see recommendation 5 of the Senior Experts Group); (b) a provision requiring that the request be executed in the manner sought by the requesting State, unless prohibited by the fundamental principles of the requested State or would be prohibited by its law in a domestic matter (see recommendation 4 (d) of the Senior Experts Group); (c) a provision on the temporary transfer to the requesting State of a witness in custody (similar to article 7 of the 1988 Convention; see, also, article 13 of the International Convention for the Suppression of Terrorist Bombing); (d) a provision on the imposition of conditions as an alternative to the denial of assistance; (e) providing assistance leading to the seizure and confiscation of assets; (f) a provision on sharing extraordinary costs.

44. Many delegations referred to the need to explore the possibility of provisions that would allow the use of new technology for the purposes of mutual assistance. In that connection, the use of video link technology, satellite links and teleconferencing to obtain witness statements and testimony, as well as for the confrontation of suspects, was underlined, together with the subsequent need to provide for perjury sanctions to be applied (see recommendation 15 of the Senior Experts Group). In addition, attention was drawn to the need for special techniques in the investigation of computer crime and the use of encryption techniques used to frustrate investigations. In that connection, it was suggested that account might be taken of the work of the Organization for Economic Cooperation and Development on the guidelines developed in that field.

45. Regarding safeguards and potential grounds for the denial of assistance, consideration could be given to the inclusion of some or all of the following grounds, depending on the scope of the obligation to cooperate in providing mutual assistance: (a) public policy, public order, sovereignty, security or other considerations; (b) politically motivated requests, or where providing assistance would facilitate prosecution on grounds of race, religion or nationality; (c) where the conduct for which assistance was sought was not sufficiently serious.

46. It was suggested that provisions on investigative techniques should be relocated under the heading of law enforcement cooperation.

47. Several delegations raised the question of the resources required to satisfy requests for mutual assistance, especially if the convention were to include provisions on the use of the new technologies mentioned above. They called attention to the need to foresee in the new convention the possibility of assistance to countries requiring it in order to be able to comply with such requests.

48. Several delegations suggested that the convention should also include provisions on the transfer of proceedings, in addition to the other forms of international cooperation in criminal matters.

3. International confiscation

49. It was observed that article 5 of the 1988 Convention was a good point of departure for the purpose of drafting provisions on cooperation for the purpose of seizure or forfeiture of assets.

E. Protection of victims and witnesses

50. Broad consensus was expressed for the appropriate protection of victims and witnesses, as that was considered one of the more important elements in effective action against organized crime. Many delegations were of the view that the relevant provisions should create the obligation for States to develop comprehensive schemes for the protection of law enforcement personnel and members of the judiciary, in addition to victims and witnesses. Further appropriate provisions should be included for the protection of those cooperating with law enforcement and judicial authorities in the investigation and prosecution of organized crime, as that was one of the more effective means of infiltrating criminal organizations. In addition, appropriate protection should be afforded to the families of all those mentioned above. Furthermore, some delegations pointed out the need to foresee provisions dealing with assistance provided for the purpose of protection by countries through whose territory witnesses might have to travel in complying with requests for the provision of evidence and testimony. Some delegations were of the view that the relocation or resettlement of persons cooperating with judicial authorities should be left at the discretion of States.

51. A number of delegations called for the inclusion of provisions that would provide mitigation of punishment or other advantage to persons cooperating in the investigation or prosecution of organized criminal groups.

52. One delegation called for caution in the elaboration of provisions related to persons cooperating with law enforcement or judicial authorities and granted immunity for such cooperation. It was important to ensure that those persons did not exploit their offer to cooperate and provide valuable information that might be needed in more than one country to frustrate the functioning of national legal regimes.

53. According to several delegations, the protection of law enforcement personnel, members of the judiciary, victims and witnesses required resources that might not be available to small and developing countries. Therefore, it was deemed essential to foresee the possibility of obtaining assistance by other States and the United Nations in developing the appropriate programmes.

54. It was observed that resolutions 95/C 327/04[3] and 97/C 10/01[4] of the Council of the European Union had dealt with many of the above-mentioned issues and should be taken into consideration.

F. Law enforcement cooperation and exchange of information

55. It was emphasized that there was a need to take advantage of existing mechanisms, networks and organizations and the established channels of communication for law enforcement cooperation in order to maximize resources and avoid duplication of efforts.

56. It was agreed that the elaboration of the new convention should take into account the recommendations of the Senior Experts Group on exchange of information, as well as an exchange of liaison officers, joint operations and other forms of law enforcement cooperation, as appropriate. It was further agreed that due account should be given to the provision of article 9 of the 1988 Convention on other forms of cooperation and training. Some delegations expressed reservations on the conduct of investigations in their territory by foreign law enforcement officials.

57. The existence of effective financial and regulatory regimes, together with the establishment and operation of financial intelligence mechanisms that would permit meaningful law enforcement cooperation, was particularly emphasized. Further attention was drawn to the need to establish arrangements for special investigative techniques, such as electronic surveillance, undercover operations and controlled deliveries, as practical tools to penetrate criminal organizations. With regard to controlled deliveries, the relevance of article 11 of the 1988 Convention was pointed out, with a view to being guided by it in order to permit similar action with regard to a broader range of contraband.

58. The new convention should include safeguards on the protection of information and data shared in the context of law enforcement cooperation. Appropriate provisions should be included to ensure security of information and data. The convention should further include provisions that would enable the State giving the information to be informed about the use of such information, as well as to give its consent before such information was shared with a third party. The receiving State should guarantee the same level of protection and confidentiality of information and data with the providing State.

59. Furthermore, it was suggested that the proposed convention could adequately serve as the necessary basis for cooperation among law enforcement agencies. Therefore, there would not be any need to call for additional bilateral or multilateral cooperation agreements for that purpose.

G. Training and technical assistance

60. The question of training was considered to apply not only to law enforcement officials, but to a broader range of criminal justice personnel as well. The subject was especially important and merited appropriate attention in the context of the convention. A good point of departure would be article 9 of the 1988 Convention. In addition to foreseeing the possibilities for technical assistance, it was pointed out that the convention should be a vehicle for national authorities to devote attention and resources to build the capacity of their criminal justice systems to combat organized transnational crime effectively.

H. Prevention

61. It was pointed out that the convention should include specific provisions on prevention and not be restricted to the suppression of organized crime. Prevention might consist in taking measures designed to reduce legal, social, administrative or technical opportunities exploited by criminal organizations. In addition, social measures might be envisaged to reduce the vulnerability of members of certain social groups becoming members or victims of criminal organizations. In order for prevention to be effective, it would be necessary to create the capacity to collect and analyse information and data on legal and physical persons involved in organized crime and to design and implement measures that would effectively shield public tenders from organized criminal groups. It was recommended that the convention should include provisions that would call upon countries to build and pool analytical expertise and, for that purpose, arrive at common definitions, standards and methodologies. The scientific community should be used to the fullest extent possible for the purpose of collecting and analysing data and information, while States should regularly monitor policies and measures. The United Nations had a particularly significant role to play in collecting information and apprising States of emerging forms of organized crime, while, with the assistance of the United Nations Interregional Crime and Justice Institute and other relevant regional institutes, collecting public information and carrying out appropriate studies.

62. Measures to ensure the transparency and accountability of financial institutions were particularly important preventive measures. The new convention should include provisions that would promote such measures, as well as transparency of flows of capital, reporting suspicious transactions, establishing mandatory record-keeping

systems and applying the "know-your-customer" rule. It was suggested that those measures should be expanded to apply to all business transactions and not be restricted only to financial institutions.

I. Role of the United Nations

63. The view was expressed that it was necessary to strengthen the role of the United Nations and other relevant organizations to ensure the implementation of the Naples Political Declaration and Global Action Plan and of the work done since its adoption. Existing relevant organizations should be exploited, avoiding duplication. That would require a proper structure, a clear mandate and appropriate funding. The convention should be the vehicle to achieve those aims.

64. With regard to the role of the United Nations in connection with the implementation of the convention, caution was expressed regarding provisions that would require reporting obligations by States. Such requirements might be resource-intensive for both States and the United Nations, while their effectiveness might be questionable. As an alternative, it was suggested that a mechanism for peer evaluation by States might be considered (as in the Financial Action Task Force on Money Laundering or in the Council of Europe). Some delegations called for caution with regard to that proposal, which might not be effective or feasible for a universal instrument. Another suggestion was to provide for measures that would ensure public confidence in the implementation of the convention, by encouraging States to promote accountability at the national level in that regard. In that connection, the recommendations on promotion of good governance contained in the Buenos Aires and Dakar Declarations on prevention and control of organized transnational crime were mentioned (see E/CN.15/1996/2/Add.1 and E/CN.15/1998/6/Add.1, respectively).

65. Caution was expressed regarding provisions that might give an excessive role to non-governmental organizations.

J. Safeguards

66. The convention should include appropriate safeguards for the protection of human rights and individual freedoms, especially in view of the fact that it would likely include extraordinary powers for law enforcement in connection with investigations of organized crime. In addition, safeguards would be needed with regard to the protection of sovereignty and compatibility with constitutional and fundamental legal provisions.

67. With regard to the ability of States to register reservations, it was suggested that, without departing from accepted norms of international treaty law on reservations, the importance of the convention would merit provisions that would permit additional safeguards in the form of reservations at the time of signature, accession or ratification. The purpose of such a mechanism would be to ensure that the convention was not rendered devoid of content through excessive reservations.

68. Delegations would need to reflect and decide whether safeguards would be included in a separate chapter or be attached to particular provisions.

69. It was noted that it would be important to allow States to express their agreement to fulfil their obligations under the convention by procedures other than ratification.

70. Finally, it was considered necessary to include in the convention a provision that would reflect the relationship between the convention and other United Nations conventions on criminal matters.

71. Having completed its general discussion, the intergovernmental group of experts decided to establish an open-ended drafting group, chaired by Mr. Luigi Lauriola (Italy), which would be entrusted with the task of

drafting a document containing, in particular, an outline of options for contents of the convention (see chapter III below).

III. OUTLINE OF OPTIONS FOR CONTENTS OF THE INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME

72. In accordance with General Assembly resolution 52/85, paragraph 14, the intergovernmental group of experts decided to submit to the Commission on Crime Prevention and Criminal Justice, at its seventh session, a non-exhaustive outline of options for contents of the international convention against organized transnational crime for consideration and action. The outline, which is presented below, should be considered in conjunction with the summary of the discussion, which includes various pertinent observations related to the options contained therein. The options are based on the draft United Nations framework convention against organized crime, proposed by the Government of Poland; the draft convention for the suppression of transnational organized crime, proposed by the Government of the United States of America; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; the recommendations of the Senior Experts Group on Transnational Organized Crime; other relevant international instruments and specific proposals submitted during the meeting by various Governments.*

1. Statement of objectives

Option 1

1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems (1988 Convention, article 2).

Option 2

1. States Parties commit themselves to cooperate to the widest extent possible in the prevention and control of organized transnational crime (Russian Federation).

Option 3

1. States Parties commit themselves to cooperate to the widest extent possible in the prevention and control of organized crime.

2. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and to infiltrate the legitimate economy (based on a combination of the Russian proposal and article 1 of the Polish draft).

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*The origin of each paragraph below is identified at the end of the paragraph or group of paragraphs in parentheses. Lack of identification of the origin indicates that the paragraph combines texts from the annexes to the draft resolution recommended for adoption by the General Assembly, contained in the Economic and Social Council resolution 1997/22, or other international instruments, with various proposals made during the meeting but not submitted in writing.

Promotion of implementation

1. Each State Party shall take effective measures to promote within its territory accountability and the scrutiny of its action in the implementation of this Convention.

2. A State Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime (Trinidad and Tobago).

2. Scope of application

Definition of scope

Option 1 ("seriousness of offence test")

1. States Parties commit themselves to combating organized transnational crime. For that purpose, this Convention shall apply to the investigation or prosecution of serious crime, which is defined to be any offence punishable [in the requesting State] by imprisonment or other deprivation of liberty of not less than ____ years (Canada).

Option 2 ("seriousness of offence and organized nature test")

1. States Parties commit themselves to cooperate to the widest extent possible in preventing and controlling organized transnational crime. For that purpose, they shall render one another assistance, with a view to preventing, investigating and prosecuting offences which are committed with the involvement of a criminal organization or association and punishable by imprisonment or other deprivation of liberty of not less than ____ years (Russian Federation).

or

1. States Parties commit themselves to cooperate to the widest extent possible in combating organized transnational crime. When considering whether a particular offence falls within the scope of this Convention, they shall take into account (a) the seriousness of the offence, (b) the involvement of a criminal organization in committing the offence and (c) the transnational effect of the offence.

2. For the purpose of this Convention, the following terms mean:

(a) Serious crime [insert definition];

(b) Criminal organization [insert definition];

(c) Transnational effect [insert definition] (Russian Federation).

Option 3 ("seriousness of offence and organized nature test")

1. States Parties commit themselves to cooperate to the widest extent possible in combating transnational crime. For that purpose, the Convention shall apply to the prevention, investigation and prosecution of serious crime, which is defined to be any offence punishable in the requesting State by imprisonment or other deprivation of liberty of not less than ____ years. The seriousness of the offence

may also be inferred from the involvement of a criminal organization in committing the offence, the transnational effect of the offence or any other element typical of organized crime (Germany).

Option 4 ("seriousness of offence and organized nature test")

1. This Convention shall apply to crimes and offences punishable by imprisonment or other deprivation of liberty of not less than ____ years when they are committed in the context of the activities of a criminal organization (France).

Option 5 ("seriousness of offence and organized nature test")

1. This Convention shall apply to the investigation or prosecution of serious crime, which is defined to be any offence punishable [in the requesting State] by imprisonment or other deprivation of liberty of not less than ____ years, except that article(s) ____ shall apply, as appropriate, where the offence is in addition committed in connection with the activities of a criminal organization.

Option 6 ("organized nature test", with illustrative list)

1. For the purpose of this Convention, "organized crime" means group activities of three or more persons, with hierarchical links or personal relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and to infiltrate the legitimate economy, in particular by:

(a) Illicit traffic in narcotic drugs or psychotropic substances, money-laundering [...];

(b) Traffic in persons [...];

(c) Counterfeiting of currency [...];

(d) Illicit traffic in or stealing of cultural objects [...];

(e) Stealing of nuclear material, its misuse or threat of misuse to harm the public [...];

(f) Terrorist acts;

(g) Illicit traffic in or stealing of arms and explosive materials or devices;

(h) Illicit traffic in or stealing of motor vehicles;

(i) Corruption of public officials.

2. For the purpose of the present Convention, "organized crime" includes commission of an act by a member of a group as part of the criminal activity of such group.

Option 7 ("organized nature test", with illustrative list)

1. For the purpose of the present Convention, "organized transnational crime" means a hierarchically organized group of three or more persons which, in a continuous or permanent manner and for the purpose of profit, plan or commit in more than one State any of the following offences:

(a) Illicit traffic in drugs or psychotropic substances;

(b) Money-laundering;

(c) Threats or public intimidation;

(d) Counterfeiting of currency;

(e) Smuggling of arms and explosives;

(f) Illicit traffic in or theft of motor vehicles;

(g) Trafficking in minors (Argentina).

2. For the purpose of this Convention, "organized crime" means the organization or agreement to form such an organization by three or more persons, on a permanent or recurrent basis, to commit acts which, in themselves or when combined with other acts, have as their objective or result the commission of offences in the following list:

(a) Traffic in narcotic drugs;

(b) Terrorist acts;

(c) Counterfeiting of currency;

(d) Money-laundering;

(e) Traffic in arms;

(f) Traffic in persons (minors, illegal migrants and white slave traffic);

(g) Traffic in body parts;

(h) Robbery with violence;

(i) Traffic in stolen motor vehicles;

(j) Abduction, with a view to extortion (Mexico).

... illicit traffic in and/or theft of raw materials and precious metals; and diversion and/or illicit transfer of public funds should be added to the list of offences (Democratic Republic of the Congo).

3. For the purpose of the present Convention, "organized crime" means when two or more persons organize or agree to organize themselves in order to commit acts which per se or in conjunction with other acts are carried out with the aim or towards the end of committing the following crimes: ... (Ecuador).

Non-applicability to offences with solely domestic connections

Option 1

1. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State (China).

Option 2

1. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature (China).

Principle of non-intervention

2. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States (1988 Convention, article 2, paragraph 2).

Exclusive exercise of jurisdiction and performance of functions

3. A State Party shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State by its domestic law (1988 Convention, article 2, paragraph 3).

Protocols

4. The annexed Protocols form an integral part of this Convention.

Choice of international instrument

5. [insert provision on the selection of instrument when several international instruments would be applicable]

6. States Parties may apply article(s) ____ of this Convention to other multilateral conventions to the extent agreed between States Parties (article 13 of the United States draft).

3. Participation in an organized crime group

Option 1

1. Each State Party shall make punishable acts consisting of participation in or association with an organized crime group whose purpose it is to commit offences (article 2, paragraph 2, of the Polish draft).

Option 2

1. Each State Party shall make punishable participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the activity of an organized crime group whose purpose it is to commit offences.

Option 3

1. Each State Party shall make a crime or offence liable to aggravated criminal sanctions when such crimes or offences are committed in the context of the activities of a structured group of persons, established over a certain period of time and acting in a concerted manner for purposes of making profit, by committing crimes and offences.

2. Each State Party shall adopt such measures as may be necessary in its domestic laws to make liable to criminal sanctions:

(a) The attempt to commit the crimes and offences under the conditions mentioned under paragraph 1 of the present article;

(b) The participation as an accomplice in the crimes and offences under the conditions mentioned under paragraph 1 of the present article;

(c) The attempt to organize the commission of, or to direct others to commit the crimes and offences under the conditions mentioned under paragraph 1 of the present article;

(d) The participation in any other way in the activities of a group as defined under paragraph 1 of the present article, when the participation is intentional and either made with the aim of furthering the general criminal activity or purpose or with the knowledge of the intention of the group to commit the crimes or offences (France).

Option 4

1. Each State Party shall make punishable by appropriate penalties that take into account their grave nature, the following conduct: [insert definition of transnational organized crime or offences covered by this Convention].

2. The provisions of this article shall not affect the obligations regarding the criminalization of offences pursuant to any other multilateral treaty (United States).

Option 5

1. A legally final judicial decision which is evidence of the existence of a specific criminal organization in one State shall be deemed sufficient proof in another State of the existence of this organization, and it shall only be necessary to prove the intentional participation of a person as a member of this organization for there to be consequences in such other State (Mexico).

2. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article [will constitute an offence] (1988 Convention, article 3, paragraph 1 (c) (iv)).

4. Money-laundering

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

(a) The conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

(b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

and, subject to its constitutional principles and basic concepts of its legal system,

(c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:

(a) It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;

(b) It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

(c) Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.

3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

(a) Ought to have assumed that the property was proceeds;

(b) Acted for the purpose of making profit;

(c) Acted for the purpose of promoting the carrying on of further criminal activity (Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, article 6).

4. States Parties shall take appropriate measures to ensure that assets generated by illegal activity or its proceeds are not made legal, and shall take legal measures to ensure that:

(a) A person convicted as a member of organized crime shall prove the legality of the purchase of goods which belong to him or in respect of which he acts as owner, otherwise they shall be confiscated;

(b) Goods which are the proceeds of the illegal activities of organized crime cannot be transferred as an inheritance, bequest, gift or in any other way;

(c) Goods which are the proceeds of illegal activities will be deemed illegal, and legal principles shall not apply to them;

(d) States shall establish fines as penalties in proportion to the sums obtained by the activities of organized crime.

5. States Parties shall adopt appropriate measures to apply instruments which relate to money-laundering to banking or financial markets, including stock exchanges, *bureaux de change* etc. (Mexico).

5. Corporate criminal liability

1. Each State Party shall consider establishing in its domestic penal legislation the possibility of criminal liability of corporate persons who derive profits from organized crime or function as a cover for the criminal organization (article 3 of the Polish draft).

6. Sanctions

1. Each State Party shall make the commission of the offences established in article(s) ____ liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation (1988 Convention, article 3, paragraph 4, and article 2, paragraph 1, of the Polish draft).

2. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with article(s) ____ are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences (1988 Convention, article 3, paragraph 6).

3. States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences established in accordance with article(s) ____ when considering the eventuality of early release or parole of persons convicted of such offences (1988 Convention, article 3, paragraph 7).

4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with article(s) ____, and a longer period where the alleged offender has evaded the administration of justice (1988 Convention, article 3, paragraph 8).

5. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with article(s) ____, who is found within its territory, is present at the necessary criminal proceedings (1988 Convention, article 3, paragraph 9).

6. For the purpose of cooperation among the States Parties under this Convention, including, in particular, cooperation under article(s) ____, offences established in accordance with article(s) ____ shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties (1988 Convention, article 3, paragraph 10).

7. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law (1988 Convention, article 3, paragraph 11).

7. Confiscation

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences set forth in article(s) ____ or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in offences set forth in article(s) ____ (article 7, paragraph 1, of the United States draft).

2. States Parties shall adopt such measures as may be necessary to enable the identification, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation (article 7, paragraph 2, of the United States draft).

3. In order to carry out the measures referred to in this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy (1988 Convention, article 5, paragraph 3).

4. (a) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in accordance with article(s) ____, the State Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, insofar as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

(b) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in accordance with article(s) ____, the requested Party shall take measures to identify, trace and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

(d) The provisions of article ____ (on mutual assistance) are applicable *mutatis mutandis*. In addition to the information specified in article ____, paragraph ____, requests made pursuant to this article shall contain the following:

(i) In the case of a request pertaining to subparagraph (a) (i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a) (ii), a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

(e) Each State Party shall furnish the Secretary-General with the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

(f) If a State Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

(g) States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article (1988 Convention, article 5, paragraph 4).

5. (a) Proceeds or property confiscated by a State Party pursuant to paragraph 1 or paragraph 4 of this article shall be returned to its lawful owner where such owner can be identified. In other respects, said proceeds or property shall be disposed of by that Party according to its domestic law and administrative procedures.

(b) When acting on the request of another State Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against organized crime;

(ii) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose (1988 Convention, article 5, paragraph 5, with the modification of paragraph 5 (a)).

6. (a) If proceeds have been transferred or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

(c) Income or other benefits derived from:

(i) Proceeds;

(ii) Property into which proceeds have been transformed or converted; or

(iii) Property with which proceeds have been intermingled

shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds (1988 Convention, article 5, paragraph 6).

7. Each State Party may consider ensuring that the onus of proof is reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings (1988 Convention, article 5, paragraph 7).

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties (article 7, paragraph 4, of the United States draft and 1988 Convention, article 7, paragraph 8).

9. Cooperation under this article may be refused if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction (Germany).

8. Transparency of transactions

1. States Parties shall implement measures to detect and monitor the physical transportation of cash and bearer negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

2. In order to improve understanding and information on the detection of financial networks linked to organized transnational crime, States Parties shall take measures to gather financial information and, as much as possible, facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies (article 11 of the United States draft).

9. Jurisdiction

Option 1

1. Each State Party shall take legislative measures to establish its jurisdiction over the crimes mentioned in article(s) ____ of the present Convention in the following cases:

(a) When the crime is committed in the territory of that State or on board a vessel or aircraft registered in that State; or

(b) When the alleged offender is a national of that State. [Such jurisdiction shall be independent of the punishability of the act in the place of its commission] (article 5, paragraph 1, of the Polish draft);

(b) *bis* When the victim is a national of that State (China);

(c) When the alleged offender is present in its territory and it does not extradite him [solely on the basis of his nationality]. Such jurisdiction shall be independent of the punishability of the act in the place of its commission (article 5, paragraph 1, of the Polish draft, as amended).

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with the domestic law (article 5, paragraph 2, of the Polish draft).

Option 2

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article(s) ____ when the offence is committed in the territory of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The alleged offender is a national of that State;

(b) The offence was committed against a national of that State; or

(c) The offence has substantial effects in that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the offences established/covered by this Convention, where the alleged offender is present in its territory and, [solely on the basis of the nationality of the person sought], it does not extradite that person [or temporarily transfer that person] for trial pursuant to [article ____, paragraph ____], to any of the States Parties that have established their jurisdiction in accordance with this article [and the requesting State requests such measures].

4. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

5. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other multilateral treaty (article 2 of the United States draft, as amended).

Option 3

The requested State shall provide all means of proof which have been requested by the requesting State for presentation in a case or criminal action against a member of organized international crime when:

(a) The proof is public, within some proceedings in the requested State;

(b) In respect of proof which is not public, the requested State may refuse to provide such proof only on the grounds that an investigation is in progress and provision of the proof would endanger this investigation;

(c) In respect of proof which is not public, the requested State shall undertake to pass on the means of proof to the requesting State as soon as possible;

(d) The requested State shall inform a third State, when this is possible, of the existence of means of proof in its courts against persons who live within its jurisdiction and of the crimes which to its knowledge were committed in said third State, unless an investigation is under way and this may be put at risk, or for reasons of national security (Mexico).

6. In a case where more than one State claims jurisdiction over an offence covered by the present Convention, the States concerned undertake to effectively coordinate their actions, particularly regarding the conditions of exercising prosecution and the modalities of recourse to mutual assistance (France).

10. Extradition

Option 1

1. This article shall apply to the offences established by the States Parties in accordance with article ____, paragraph ____.

2. Each of the offences to which this article applies shall be deemed to be included as a extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. States Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested States Parties may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a State Party in whose territory an alleged offender is found shall:

(a) If it does not extradite him in respect of an offence established in accordance with article ____, paragraph ____, on the grounds set forth in article ____, paragraph ____, subparagraph ____, submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting State Party;

(b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article ____, paragraph ____, subparagraph ____, submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting State Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

11. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. States Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there (1988 Convention, article 6).

2. The offences mentioned in article(s) ____ of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty between the States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them (article 6, paragraph 1, of the Polish draft).

3. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it shall consider the present Convention as the legal basis for extradition in respect of the offences mentioned in article(s) ____ of this Convention. Extradition shall be subject to the other conditions provided by the law of the requested State (article 6, paragraph 2, of the Polish draft).

4. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences mentioned in article(s) ____ of the present Convention as extraditable offences between them, subject to the conditions provided by the law of the requested State (article 6, paragraph 3, of the Polish draft).

Option 2

1. The offences set forth in article(s) ____ shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article(s) ____. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article(s) ____ as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. The offences set forth in article(s) ____ shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. For purposes of extradition between the States Parties, none of the offences set forth in article(s) ____ shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

6. If a State Party denies extradition to another State Party for an offence set forth in article(s) ____ because the person sought is a national of the requested Party, the requested Party shall, upon request of the requesting Party, transfer the person to the requesting Party for trial or other proceedings and the person transferred shall be returned to the requested Party to serve any sentence imposed in the requesting Party as a result of the trial or proceedings for which transfer was made.

7. With respect to the offences as defined/covered in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention (article 5 of the United States draft).

11. Obligation to extradite or prosecute (*aut dedere aut judicare*)

Option 1

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established by this Convention, where the alleged offender is present in its territory and, solely on the basis of the nationality of the person sought, it does not extradite that person or conditionally extradite that person for trial pursuant to article(s) ____ to any of the States Parties that have established their jurisdiction in accordance with this article (United States).

Option 2

1. The State Party in the territory of which the offender or the alleged offender is found, if, [solely on the basis of the nationality of the person sought], it does not extradite that person or [temporarily] transfer that person for trial pursuant to article(s) ____, shall be obliged, upon request of the State Party seeking extradition or transfer, in cases where article(s) ____ applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article(s) ____ shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present (article 3 of the United States draft, as amended).

12. Extradition of nationals

Option 1

1. Each State Party shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence defined in article(s) ____ of the present Convention.

2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the request[ed] State (article 7 of the Polish draft, as amended).

Option 2

1. The State Party in the territory of which the offender or the alleged offender is found, if, solely on the basis of the nationality of the person sought, it does not extradite that person or conditionally extradite that person for trial pursuant to article(s) ____, shall be obliged, upon request of the State Party seeking extradition or transfer, in cases where article(s) ____ applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

Option 3

1. If a State Party does not extradite its nationals, said Party shall undertake to periodically review its domestic legislation in order to determine whether extradition or conditional extradition of nationals might be permitted.

13. Consideration of requests for extradition

Option 1

1. States Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for extradition and any communication thereto shall be effected between the authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.

Option 2

1. With a view to facilitating cooperation within the framework of the Convention, States Parties shall establish central authorities, which shall communicate directly between themselves. The central authorities shall be responsible for handling incoming and outgoing requests for extradition and mutual legal assistance (Russian Federation).

2. [Notwithstanding paragraph 1, States Parties], subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries, and extraditing persons based only on warrants of arrests or judgements (article 6, paragraph 4, of the Polish draft, as amended).

3. The offences mentioned in article(s) ____ of the present Convention shall not be considered political offences for the purpose of extradition (article 8, paragraph 1, of the Polish draft).

4. Extradition shall not be granted if the requested State Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, [gender], nationality or political opinion, or that a person's position may be prejudiced for any of these reasons (article 8, paragraph 2, of the Polish draft, as amended).

5. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its laws, take that person into custody

or take other measures to ensure that person's presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. Such State shall immediately make a preliminary inquiry, in accordance with its own laws (article 9 of the Polish draft combined with article 4, paragraph 1, of the United States draft).

6. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) To communicate with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State (article 4, paragraph 2, of the United States draft).

7. The rights referred to in paragraph 6 of this article shall be exercised in conformity with the laws and regulations of the State Party in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 5 of this article are intended (article 4, paragraph 3, of the United States draft).

8. Cooperation under this article or under article(s) ____ may be refused if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction (Germany).

14. Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences mentioned in article(s) ____ of the present Convention and exercise flexibility in the execution of requests for such mutual assistance (article 10, paragraph 1, of the Polish draft and article 6, paragraph 1, of the United States draft).

2. State Parties shall afford ____ judicial proceedings in relation to the offences mentioned in article(s) ____ of the present Convention and to ____ offences (Netherlands).

3. Subject to domestic legislation, a State Party shall not decline to render mutual legal assistance on the ground of bank secrecy or on the ground that there is an absence of dual criminality (article 10, paragraph 2, of the Polish draft combined with article 6, paragraph 3, of the United States draft).

4. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them or pursuant to domestic law (article 6, paragraph 2, of the United States draft).

5. States Parties shall adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested for purposes of assistance under this Convention to be transferred if the person consents and if the competent authorities of both States agree. For purposes of this paragraph:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred as soon as circumstances permit or as otherwise agreed by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he was transferred for time served in the custody of the State to which he was transferred (article 6, paragraph 4, of the United States draft).

6. States Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization (Interpol), if possible (1988 Convention, article 7, paragraph 8).

7. Requests shall be made in writing in a language acceptable to the requested State Party. The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith (1988 Convention, article 7, paragraph 9).

8. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

(c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought (1988 Convention, article 7, paragraph 10).

9. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution (1988 Convention, article 7, paragraph 11).

10. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request (1988 Convention, article 7, paragraph 12).

11. The requesting State Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party (1988 Convention, article 7, paragraph 13).

12. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party (1988 Convention, article 7, paragraph 14).

13. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted (1988 Convention, article 7, paragraph 15).

14. States Parties shall, where feasible, render mutual legal assistance notwithstanding an absence of dual criminality (Russian Federation).

15. Reasons shall be given for any refusal of mutual legal assistance (1988 Convention, article 7, paragraph 16).

16. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary (1988 Convention, article 7, paragraph 17).

17. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of

leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will (1988 Convention, article 7, paragraph 18).

Option 1

18. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne (1988 Convention, article 7, paragraph 19).

Option 2

18. Where a State requests legal assistance from another State and compliance with the request would result in unusual or extraordinary expenditure, the requested State may require the requesting State to provide financial assistance to deal with the request (Trinidad and Tobago).

19. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article (1988 Convention, article 7, paragraph 20).

20. Cooperation under this article may be refused the requested State if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction (Germany).

15. Investigation of offences

1. If permitted by the basic principles of their respective domestic legal systems, [and with due regard to fundamental human rights], States Parties shall take the necessary measures, within their possibilities, to allow for arrangements for electronic surveillance and undercover operations in order to gather evidence and take legal action against persons involved in the offences set forth in this Convention, with a view to identifying persons involved in offences [of an organized nature] established in accordance with article(s) ____, and to taking legal action against them (1988 Convention, article 11, paragraph 1, together with article 9, subparagraph (f), of the United States draft, as amended).

2. If permitted by the basic principles of their respective domestic legal systems, States Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article(s) ____ and to taking legal action against them (1988 Convention, article 11, paragraph 1).

3. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned (1988 Convention, article 11, paragraph 2).

4. Illicit consignments whose controlled delivery is agreed to may, with the consent of the States Parties concerned, be intercepted and allowed to continue with the goods intact or removed or replaced in whole or in part (1988 Convention, article 11, paragraph 3).

16. Transfer of proceedings

States Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article(s) ____ of the present Convention in cases where such transfer is considered to be in the interests of a proper administration of justice (article 8 of the United States draft).

17. Recognition of foreign judgements

Each State Party shall take legislative measures to recognize, in their domestic law, the previous foreign conviction for offences referred to in article(s) ____ of the present Convention for the purpose of establishing the criminal history of the alleged offender (article 4 of the Polish draft).

18. Protection of victims and witnesses

1. In order to ensure the protection of witnesses, States Parties shall, on request, limit disclosure of the addresses or identifying particulars of persons who testify. States Parties shall also adopt measures to permit, upon request, persons to testify by telecommunications or video link or use other modern technology in order to provide testimony to the prosecuting State (article 6, paragraph 5, of the United States draft).

Option 1

2. States Parties shall cooperate in the establishment and implementation of their respective witness protection programmes, including the protection of witness families, in particular by creating the possibility of the settlement of a foreign protected witness in their territories (article 13 of the Polish draft).

Option 2

2. States Parties shall cooperate in the establishment and implementation of their respective justice protection programmes, including the protection of witnesses, law enforcement officers, judicial officers, jurors and their families, in particular by creating the possibility of the settlement of a foreign protected witness in their territories (Trinidad and Tobago).

Option 3

1. Within the regional organizations of the United Nations, the establishment of witness protection programmes will be encouraged so that, based on reciprocity, the different States may be relied upon to provide accommodation for witnesses and their families who require this.

2. States Parties shall allow the transit of witnesses when they are en route to other countries for the purpose of collaborating with the authorities of such other countries. For this purpose, the States of origin and of destination shall notify the State of transit. The State of transit shall allow such transit unless there is a serious reason to object.

3. When a person is collaborating with justice in a State, or is capable of collaboration, and the elements of proof which he can supply are important for prosecuting other members of organized crime who are in another State, the former State will assess the possibility of granting benefits or immunity for this collaboration. In any case, collaboration which is given will be assessed as national elements and the priority of combating international organized crime will be taken into account at all times (Mexico).

Option 4

1. If the fundamental principles of their respective legal systems so allow, States Parties shall adopt the necessary measures, within their means, to permit the appropriate use, at the international level, of the technique of cooperation with the judicial authorities, consisting in the offer of immunity (non-self-incrimination by reason of information divulged in regard to offences committed by him), or the offer of the benefit of a reduction in the penalties applicable to offences relating to or connected with organized crime, to any person who furnishes effective information for the purpose of dismantling a transnational criminal organization and punishing its members.

2. Effective information shall mean disclosures which are effective in securing the arrest of one or more members of the criminal organization or in obtaining evidence instrumental in the indictment or conviction of other members of that organization.

3. The benefits granted in return for cooperation with the judicial authorities may be granted at any time during the investigation, pre-trial hearing or proceedings or after pronouncement of the sentence.

International effects of benefits granted in return for cooperation

1. In principle, benefits granted in return for cooperation with the judicial authorities which entail the immunity of the person testifying shall have effect only in the State which granted such immunity; if a second State acquires the testimony given by a person cooperating in return for benefits, such testimony may be used against persons other than the person so cooperating; the State utilizing such testimony shall be required to grant the benefit of non-incrimination to the cooperating person and may consequently not use such testimony or any evidence directly resulting therefrom against such person; two or more States may jointly grant benefits of non-self-incrimination when a transnational organization is under investigation. Such evidence shall be governed by the aforementioned principles; a State may grant benefits in return for cooperation with the judicial authorities in respect of offences committed in the territory of another State, and the cooperation of witnesses may be evaluated with a view to granting them immunity or reduced penalties in conformity with the laws of the first-mentioned State; when a cooperating person is required to testify before the court of another country, States shall facilitate his transfer to the State requiring such testimony. This privilege shall override the claim of a third State to impose punishment (Mexico).

19. Law enforcement cooperation

Option 1

1. States Parties shall consider entering into bilateral and multilateral agreements including the direct cooperation between their law enforcement agencies and common operations in the territory of each State Party (article 11, paragraph 1, of the Polish draft).

Option 2

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat offences set forth in this Convention. Each State Party shall, in particular, adopt effective measures:

(a) For the purposes of carrying out the cooperation and assistance provided for under this Convention, including the making and receiving of requests for cooperation and assistance, to designate a central authority that shall communicate directly with the central authority of other States Parties;

(b) To establish and maintain channels of communication between their competent authorities, agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of the offences set forth in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(c) To cooperate with one another in conducting inquiries, with respect to offences set forth in this Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in the offences set forth in this Convention;

(ii) The movement of proceeds or property derived from the commission of such offences;

(d) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;

(e) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(f) To provide protection for persons who have given or agreed to give information or evidence, or who participate or who have agreed to participate in an investigation or prosecution of an offence established in accordance with this Convention, and for the relatives and associates of such persons who require protection because of risks to the security of the person. States Parties should consider, as appropriate, reciprocal arrangements for the protection of witnesses and other endangered persons;

(g) To permit the competent authorities, when considering punishment, to consider as a mitigating factor the extent of cooperation provided by an accused person in the investigation and prosecution of other persons or the ability and intention of the accused to provide such cooperation;

(h) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including the posting of liaison officers (article 9 of the United States draft).

2. States Parties shall cooperate closely in the prevention, investigation and prosecution of the offences set forth in article(s) ____. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:

(a) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences set forth in article(s) ____ (article 12, paragraph 1, of the United States draft).

3. States Parties shall consider the establishment of a common data bank concerning organized transnational crime, including information gathered regarding activities of criminal groups, their members and convicted persons (article 12, paragraph 2, of the United States draft).

[insert article 9 of the 1988 Convention, amended to reflect orientation towards organized crime]

4. States Parties shall consider the establishment of units to facilitate the sharing of law enforcement information regarding money-laundering (see Senior Experts Group recommendation 34).

20. Collection and sharing of information on organized crime

1. States Parties shall consider developing and sharing analytical expertise concerning organized crime activities. In this connection, common definitions, standards and methodologies shall be applied as appropriate.

2. States Parties shall consider, with the support of the scientific community, analysing trends in organized crime in their countries, as well as the circumstances in which organized crime can operate, the professional groups involved and the communications technologies.

3. States Parties shall consider monitoring their policies and actual measures to prevent and combat organized crime and make assessments of their effectiveness and efficiency.

4. States Parties shall provide, on request, reports to the Secretary-General on current and emerging organized crime activities in their States, as well as on their experiences with preventive measures and control measures.

5. The Secretary-General, with the assistance of the United Nations Interregional Crime and Justice Research Institute and the other institutes in the United Nations network on crime prevention and criminal justice, shall undertake to collect and analyse public information and research findings concerning organized crime, prepare overviews of global trends in organized crime and prepare inventories of policies and measures to prevent and control organized crime (Netherlands).

21. Training and technical assistance

Option 1

1. States Parties shall strengthen cooperation in law enforcement training and crime prevention to facilitate mutual assistance and extradition, such as language training, secondments and exchanges.

2. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization (Interpol) and within other relevant bilateral and multilateral agreements or arrangements (article 11 of the Polish draft).

3. States Parties shall consider entering into bilateral and multilateral agreements on the cooperation between or among criminal justice authorities on the exchange of information concerning all aspects of

the criminal activity of persons involved in organized crimes, defined in article(s) ____ of the present Convention, including information from their registers of convicted persons.

4. States Parties shall facilitate such exchange of information on the basis of their domestic legislation.

5. States Parties shall consider the establishment of a common data bank on organized criminality, including information on the activities of criminal groups and their members, and information on convicted persons.

6. The collection of information mentioned above shall be carried out with due regard for the need for legal protection of personnel files, as provided for in the domestic and international provisions (article 12 of the Polish draft).

Option 2

1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors and investigating magistrates, and other personnel charged with the suppression of the offences set forth in this Convention. Such programmes shall deal, in particular, with the following:

(a) Methods used in the detection and suppression of the offences set forth in this Convention;

(b) Techniques used by persons suspected of involvement in offences set forth in this Convention;

(c) Detection and monitoring of the movements of proceeds, property and instrumentalities derived from offences set forth in this Convention and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

(d) Collection of evidence;

(e) Modern law enforcement techniques.

2. States Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and stimulate discussion on problems of mutual concern.

3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance, including language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities (article 10 of the United States draft).

4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation, provided for by the present Convention, to be effective, and for the prevention and control of organized transnational crime (Morocco).

22. Prevention

1. States Parties shall consider taking steps to reduce to the extent possible existing social, legal, administrative or technical opportunities for criminal organizations to commit profitable crimes and to

alleviate the circumstances that make socially marginalized groups vulnerable to the prospect of a criminal career (Netherlands).

2. States Parties shall consider setting up or supporting technical cooperation programmes aiming at the prevention of organized crime by social, legal or technical means and shall encourage international funding agencies to promote such programmes (Netherlands).

3. States Parties shall consider collecting and exchanging information with respect to registered legal persons and the physical persons involved in their creation, direction and funding, with a view to preventing the penetration of organized crime in the public and legitimate private sector (Netherlands).

4. States Parties shall consider reviewing their national legislation in order to ensure that it provides for the opportunity to exclude from participation in tender procedures conducted by the State applicants who have committed offences connected with organized crime or whose funds have been illegally acquired (Netherlands).

5. In order to establish an effective financial and regulatory regime to deny organized criminals and their illicit funds access to national and international financial systems, thus preserving the integrity of financial systems worldwide and ensuring compliance with laws and other regulations against money-laundering, the following language is recommended:

"States Parties shall require financial institutions to have in place mandatory financial record-keeping and reporting systems, including a requirement to report suspicious transactions. Furthermore, States Parties shall impose on financial institutions customer identification and verification requirements applying the principle of 'know your customer' in order to have available for competent authorities the necessary information on the identity of clients and the financial movements they carry out" (based on recommendations 10-12 and 14-19 of the Financial Action Task Force on Money Laundering, United States proposal).

23. Role of the United Nations and other relevant organizations

1. For the purpose of examining the progress made by the States Parties in achieving the realization of the obligations undertaken in the present Convention, these States will provide periodical reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

2. States Parties undertake to provide such reports within two years of the entry into force of the Convention for the State concerned, and thereafter every five years.

3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

4. A State Party which has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

5. The Commission may request from the States Parties further information relevant to the implementation of the Convention.

6. The Commission shall make its recommendations, and submit to the Economic and Social Council reports on its activities, in accordance with existing provisions.

7. States Parties shall make their reports widely available to the public in their own countries (article 15 of the Polish draft).

8. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) Intergovernmental and non-governmental organizations, in consultative status with the Economic and Social Council, and other invited multilateral organizations, shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Commission shall transmit, as it may consider appropriate, to the intergovernmental and non-governmental organizations, other multilateral organizations and the specialized agencies any reports from the States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on these requests or indications;

(c) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

(d) The Commission may make suggestions and general recommendations based on information received pursuant to article(s) ____ of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the Economic and Social Council, together with comments, if any, from the States Parties (article 16 of the Polish draft).

[insert provisions on the possible role of the United Nations in preparing reports on current and emerging organized criminal activities, as well as on national experiences with preventive measures and countermeasures, and in collecting and analysing information and research findings]

24. Relation with other conventions

Option 1

This Convention shall not prejudice the application of other United Nations conventions on criminal matters (Netherlands).

Option 2

The provisions of the present Convention prevail over those of other United Nations conventions dealing with the same matters (Netherlands).

25. Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of

one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of ratification or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to [the Secretary-General of the United Nations] (article 14 of the United States draft).

26. Signature, ratification, accession and reservations

Option 1

1. This Convention shall be open to all States for signature from _____ to ____, and thereafter at the Headquarters of the United Nations in New York until ____ (article 17 of the Polish draft).

2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations (article 18 of the Polish draft).

3. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

4. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General (article 21 of the Polish draft).

Option 2

1. This Convention shall be open for signature by all States until [date] at [United Nations Headquarters in New York].

2. This Convention is subject to ratification. The instruments of ratification [shall be deposited with the Secretary-General of the United Nations].

3. This Convention is subject to accession by any State. The instruments of accession shall be deposited with [the Secretary-General of the United Nations] (article 15 of the United States draft).

27. Entry into force

Option 1

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument (article 19 of the Polish draft).

Option 2

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the [twenty-fifth] instrument of ratification or accession with [the Secretary-General of the United Nations].

2. For each State ratifying or acceding to the Convention after the deposit of the [twenty-fifth] instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession (article 16 of the United States draft).

28. Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted (article 20 of the Polish draft).

29. Denunciation

Option 1

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General (article 22 of the Polish draft).

Option 2

1. Any State Party may denounce this Convention by written notification to [the Secretary-General of the United Nations].

2. Denunciation shall take effect one year following the date on which notification is received by [the Secretary-General of the United Nations] (article 17 of the United States draft).

30. Languages and depositary

Option 1

1. The Secretary-General of the United Nations is designated as the depositary of the present Convention (article 23 of the Polish draft).

2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention (article 24 of the Polish draft).

Option 2

1. The original of this Convention, of which the [Arabic, Chinese, English, French, Russian and Spanish] texts are equally authentic, shall be deposited with [the Secretary-General of the United Nations], who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at [place] on [date] (article 18 of the United States draft).

IV. ADOPTION OF THE REPORT OF THE INTER-SESSIONAL OPEN-ENDED INTERGOVERNMENTAL GROUP OF EXPERTS

73. At its last meeting, on 6 February 1998, the intergovernmental group of experts adopted the report of its meeting, as orally revised and amended during the discussion.

V. CLOSURE OF THE MEETING

74. At the closing session, statements were made by Mr. Zbigniew Cieslak, Deputy Minister of the Interior of Poland, and Mr. Radek Sikorski, Deputy Minister for Foreign Affairs, who underlined the importance of closer cooperation among States by devising global solutions to fight organized crime as a global problem. He stated that Poland was gravely concerned with the problem and, as an active member of the United Nations, would do its best to ensure a proper follow-up to the recommendations of the Meeting. The representatives of Argentina, on behalf of the Latin American States, France, the Democratic Republic of the Congo, on behalf of the African States, Italy, on behalf of the Western European and other States, and the Russian Federation, on behalf of the Eastern European States, also made statements expressing their appreciation to the host Government for its generous hospitality. They expressed their satisfaction with the outcome of the meeting, which produced viable recommendations, thus laying the basis for the consideration of the question of a draft convention on organized transnational crime by the Commission at its seventh session.

75. The representative of France proposed that henceforth the title of the convention should read Warsaw convention against organized transnational crime.

76. The representative of Argentina informed the meeting of the interest of his Government to host a future meeting on the elaboration of a draft international convention against organized transnational crime.

77. The representative of the United Nations Secretariat also made a statement, in which he welcomed the generous offer of the Government of Argentina to host a future meeting on the draft convention. He stated that the Secretariat had taken note of the concern expressed by some delegations regarding the problem of interpretation and translation of documents into all the official languages of the United Nations. He underlined that the Secretariat had to rely on the generous hospitality of the host Government and that there was a limit to what could be accomplished within available resources. In future meetings of this kind, it would be essential to obtain the resources required for that purpose in order to be able to provide the necessary services to all delegations.

78. In his closing statement, the Chairman emphasized that the work carried out by the Warsaw meeting laid the foundation for elaborating a draft international instrument that would be comprehensive and flexible, in order to counteract the ever-changing forms and dynamics of organized transnational crime. The Chairman stressed that the ongoing work on the drafting of the convention against organized transnational crime should be accompanied by adequate resources to permit its further elaboration. Support for that work by the international community was urgently needed, so as to have at its disposal a legal instrument capable of tackling effectively and efficiently organized transnational crime.

Notes

[1]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[2]United Nations, *Treaty Series*, vol. 359, No. 5146.

[3]*Official Journal of the European Communities*, vol. 38 (7 December 1995).

[4]Ibid., vol. 40 (1 January 1997).

Annex

LIST OF DOCUMENTS

Document symbol	*Title or description*
A/52/357	Letter dated 16 September 1997 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General, transmitting the draft international convention against the smuggling of illegal migrants
E/CN.15/1996/2/Add.1	Recommendations of the regional ministerial workshop on follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held at Buenos Aires from 27 to 30 November 1995: report of the Secretary-General
E/CN.15/1997/7/Add.1	Views of States on the elaboration of an international convention against organized transnational crime: report of the Secretary-General
E/CN.15/1997/7/Add.2	Report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime: report of the Secretary-General
E/CN.15/1998/6/Add.1	Recommendations of the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Dakar from 21 to 23 July 1997: report of the Secretary-General
IOEIG/1998/1	Comparative study on the elaboration of a preliminary draft of a comprehensive international convention against organized transnational crime, prepared by the Max Planck Institute for Foreign and International Criminal Law

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Item 6 (a) of the provisional agenda*

INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

IMPLEMENTATION OF THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN AGAINST ORGANIZED TRANSNATIONAL CRIME: QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME, AND OTHER POSSIBLE INTERNATIONAL INSTRUMENTS

Report of the Secretary-General

Summary

The present report provides an overview of the continuing work of the Centre for International Crime Prevention regarding implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and draws on information provided by 17 States and the United Nations Development Programme. Developments on specific issues, such as extradition and mutual assistance in criminal matters, are also covered, as they are directly related to both the implementation of the Naples Political Declaration and Global Action Plan and the strengthening of international cooperation against organized transnational crime. The report also sets out future action to be taken by the Centre in response to the needs and requests of Member States to strengthen their efforts in preventing and controlling organized transnational crime. The report raises issues that warrant consideration by the Commission with a view to determining further work in this area.

*E/CN.15/1998/1.

INTRODUCTION

1. The General Assembly, in its resolution 52/85, on the follow-up to the Naples Political Declaration and Global Action Plan against Transnational Organized Crime, requested the Secretary-General to continue his work on the central repository established pursuant to Economic and Social Council resolution 1996/27 with a view to increasing, maintaining and updating the data and other information contained in the repository. In its resolution 1996/27, the Council requested the Secretary-General to continue collecting and analysing information on the structure, dynamics and other aspects of all forms of organized transnational crime and to report to the Commission on Crime Prevention and Criminal Justice on the implementation of the resolution.

2. A major step in the implementation of the Naples Political Declaration and Global Action Plan has been the establishment, in compliance with General Assembly resolution 52/85, of an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime. A first meeting of the group of experts was held at Warsaw from 2 to 6 February 1998 (E/CN.15/1998/5).

3. The present report summarizes the results of the work carried out by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in furthering the implementation of the Naples Political Declaration and Global Action Plan. It also draws on information provided by 17 States (Austria, Chile, Cook Islands, Cuba, Egypt, Guyana, Hungary, Kenya, Japan, Jordan, Mexico, Panama, Saudi Arabia, South Africa, Spain, Sweden and Tunisia) and by the United Nations Development Programme (UNDP). Developments on specific issues, such as extradition and mutual assistance in criminal matters,* are also considered in this report, as they are directly related to both the implementation of the Naples Political Declaration and Global Action Plan and the strengthening of international cooperation in action against organized transnational crime.

I. IMPLEMENTATION OF THE NAPLES POLITICAL DECLARATION AND GLOBAL ACTION PLAN

A. Action by Member States

4. The responses received to the request of the Secretary-General for information on action taken at the national level to prevent and control organized transnational crime fall into two broad categories. The first and larger category comprises information on the elaboration of specific national legislation to counter organized crime, as well as measures taken to restructure the criminal justice system with a view to reacting to the threat posed by this form of crime. The second includes national information on, and assessments of, operations carried out by organized criminal groups.

5. In connection with national legislation, a significant development was the introduction of a definition of organized crime, or the use of elements thereof, in the legislation of some responding States. Chile, Hungary, Kenya, Mexico and Sweden reported that they had adopted legislation, or terms of reference used by law enforcement agencies, which contained or referred to defining characteristics of criminal organizations. Such characteristics included structural and operational features found to be common to organized criminal groups, including the continuity of the criminal association, division of labour, hierarchical structure and links with other groups, as well as the use of violence, intimidation and corruption.

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*See the report of the expert group meeting on mutual assistance in criminal matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998 (E/CN.15/1998/7).

6. Other countries had not yet felt it necessary to embark upon the elaboration of legislation specifically dealing with organized crime but had established interministerial expert groups to study the issue. Saudi Arabia and Tunisia were being used mainly as transit countries and feared that, unless proper and timely attention was given to the problem, organized crime might take root in their national territory and become a threat to national security.

7. Substantive legislation elaborated by responding States for the purpose of curbing the operations of organized crime dealt with issues such as illicit drug and arms trafficking, trafficking in illegal migrants and in stolen vehicles, and money-laundering. Chile, Hungary, Spain and Tunisia indicated that terrorism was an issue also covered by their national legislation against organized crime, particularly with regard to possible links between terrorist groups and organized criminal groups.

8. Regarding law enforcement operations, some countries had adopted measures allowing investigation techniques aimed at weakening and penetrating criminal organizations. In particular, Chile, Mexico, Spain and Sweden reported that their national law enforcement agencies could use investigative tools that had proved effective in dismantling criminal groups, such as undercover agents to infiltrate criminal associations and controlled delivery to uncover as many criminals involved in illicit transactions as possible, as well as electronic and other surveillance methods. Measures to protect witnesses and former criminals who had decided to abandon organized criminal groups and cooperate with the authorities were also reported as effective means of obtaining information necessary for the successful prosecution of cases involving organized crime.

9. International cooperation, both bilateral and multilateral, was regarded by many responding States as the main avenue for successful action against criminal groups whose operations and interests were no longer restricted by national borders. Work on issues such as extradition and mutual assistance in criminal matters had been done within different frameworks, *inter alia*, on the basis of existing international conventions, regional schemes and agreements and bilateral cooperation treaties, and also in anticipation of prospective international instruments to combat organized crime.

10. Chile, Guyana, Hungary, Kenya, Japan, Mexico, Saudi Arabia, South Africa and Tunisia provided information on a number of legislative and other measures to combat organized crime that had been taken as a result of work done under the auspices of the United Nations. Spain and Sweden referred to similar initiatives they had taken as part of their cooperation within the region, particularly within the framework of the European Community. Thus, multilateral cooperation had a direct beneficial impact, as it provided Member States with the opportunity to share and exchange experiences and knowledge and to pool resources.

11. A disturbing feature emerging from the information provided on organized criminal operations related to trafficking in human beings. Hungary, Japan, Mexico, Sweden and Tunisia reported that organized criminal groups controlled the smuggling of illegal migrants and refugees into their territories or were using the territories as transit points. The measures taken by national authorities to prevent such waves of migration required the support of experienced international organizations.

B. Action by the Secretariat and other international organizations

12. An important achievement of the Centre for International Crime Prevention in the implementation of the Naples Political Declaration and Global Action Plan was the elaboration, pursuant to Economic and Social Council resolution 1996/27, of a training manual for law enforcement personnel responsible for investigating organized transnational crime. A draft of the manual is being finalized, taking into account the recommendations made by a meeting of a group of experts, held at Vienna from 8 to 10 December 1997.

13. The manual, which takes into account existing proposals and approaches of the United Nations and other international forums, deals with both general issues, such as the definition, nature, evolution and impact of organized crime or criminal activities related to organized crime, and more specific topics related to the work of law enforcement agencies, including ad hoc investigative techniques and methods, characteristics of the model specialist investigator and technical and scientific resources required for investigation. Best practices and methods of investigation of proven effectiveness are also taken into account.

14. Technical assistance has been provided by the Centre to several States, at their request, in order to strengthen their criminal justice systems, particularly those sectors most affected by the phenomenon of organized crime (E/CN.15/1998/9). The Centre has developed a number of project proposals, which have been submitted to potential donors for funding (E/CN.15/1998/CRP.6).

15. Training activities were also the focus of a large project being implemented by the Centre in Kyrgyzstan in cooperation with UNDP and the Danish International Development Agency. The project activities, which are aimed at enhancing the capacity of the Ministry of Internal Affairs to combat organized crime, include the provision of technical equipment, advisory services and the elaboration of a training manual.*

16. Following the Regional Ministerial Workshop held at Buenos Aires from 27 to 30 November 1995, the Centre organized two regional ministerial workshops on the follow-up to the Naples Political Declaration and Global Action Plan, for Africa and for Asia and the Pacific. Reports on the two more recent workshops will be submitted to the Commission at its seventh session (E/CN.15/1998/6/Add.1 and 2).

17. The Centre organized, in cooperation with the International Institute of Higher Studies in Criminal Sciences, the first of a series of training seminars for professionals involved in day-to-day policy-oriented and operational work on extradition. The aim of the seminar was to identify problems relating to cooperation in criminal matters and to devise effective strategies for improving understanding of extradition mechanisms and procedures. The seminar, which was conducted in English and held at Siracusa, Italy, in November 1997, was attended by officials from 42 countries in all regions. The Institute has indicated its intention to host three more seminars in 1998: one in English, one in French and one in Spanish. The Government of Spain has expressed a keen interest in hosting or substantially contributing to the seminar to be held in Spanish.

18. Participants in the first seminar stressed that extradition should be at the forefront of national and international policies for combating transnational crime. In fact, the cross-border nature of organized crime demanded a collective rethinking of the modalities of international cooperation with a view to fostering mutual legal assistance. Many participants also emphasized that training activities should be complemented by advisory services and assistance in developing and amending extradition legislation. In evaluating the seminar, participants welcomed both the initiative taken in organizing it and the format selected for its conduct and expressed their gratitude to the Institute for making the seminar possible. It was unanimously agreed that such activities were long overdue, that they should be repeated in the future as often as possible and that their scope should be expanded to include other modalities of international cooperation in criminal matters. Donor countries were called upon to actively support the organization of future seminars, which could potentially yield valuable practical results in return for a relatively modest investment.

19. Drawing on the experience gained through the training seminars on extradition, the Centre is exploring the possibility of elaborating a training manual on that subject. The manual will build on the modified model treaty, pursuant to General Assembly resolution 52/88, and on the material collected or produced for the training

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*For the two training seminars for senior law enforcement and criminal justice officers of the former Yugoslav Republic of Macedonia, see the report of the Secretary-General on technical cooperation (E/CN.15/1998/9).

seminars, and will follow the format used in the seminars, incorporating the analysis of various case studies to better illustrate the problems encountered in practice and potential solutions. The elaboration of the manual has been welcomed by Governments and intergovernmental organizations, which have pledged their support.

20. The Centre has also embarked on the development of model legislation on extradition, on the basis of the model treaty and taking into account the recommendations of the expert group meeting on extradition (E/CN.15/1997/6 and Corr.1). Following the training seminar mentioned in paragraph 17 above, the International Institute of Higher Studies in Criminal Sciences hosted at Siracusa a small informal group of experts that carried out a preliminary review of the draft model legislation. The Centre is continuing its work on the basis of the results of the preliminary review. Extrabudgetary resources will be required to convene a group of experts for the purpose of finalizing the text.

21. In addition to the activities on extradition, the Centre continued work on the establishment of the central repository on organized crime, pursuant to Economic and Social Council resolution 1996/27. The existing material is being systematized in accordance with the guidelines set out in annex II, entitled "Methodological points and categorization", contained in Council resolution 1997/22, and work on the development of software is nearing completion. The full cooperation of all Governments is crucial to developing and maintaining the repository in such a way as to make it as useful as possible. The data and other information that have been received to date from Member States have not been in conformity with the guidelines set out in annex II in Council resolution 1997/22.

22. UNDP indicated that it was implementing several country programmes in different regions and actively supported activities in the United Nations system on this issue, particularly the activities of the Centre.

II. PROPOSALS FOR CONSIDERATION BY THE COMMISSION

23. The process of operationalizing the activities of the Centre for International Crime Prevention in the field of action against organized transnational crime, which began with the elaboration of the training manual and the provision of technical assistance to some Member States, has already produced useful results. For example, needs-assessment and advisory and evaluation missions carried out in connection with technical cooperation activities have demonstrated that many countries, particularly developing countries and countries with economies in transition, require up-to-date legislative frameworks to keep pace with new criminal phenomena. More often than not, the need for legislation is accompanied by a need to restructure the criminal justice system.

24. In order to facilitate the work of the Centre in developing and monitoring the central repository, the Commission may wish to encourage States to actively cooperate with the Centre by providing and updating information and legislative material. Furthermore, the Commission may wish to explore ways of supplementing the material provided by States in order to render the central repository more comprehensive and useful.

25. The Centre intends to elaborate model legislation and provide assistance to requesting Member States in the formulation of criminal justice policies aimed at preventing and controlling organized transnational crime. The Centre will also continue its work in the areas of extradition, mutual assistance in criminal matters and other modalities of international cooperation. To obtain the best possible results, it will be necessary to carry out applied research on legal and policy issues, criminal justice administration and other relevant disciplines, taking into account differences in judicial systems and cultures. Special attention will need to be paid to strengthening internal expertise through training. The Commission may wish to discuss and select issues to be taken into account in this course of action and to identify mechanisms for its implementation, such as the convening of expert group meetings and the organization of the work of governmental and independent experts, or any other modalities Member States may consider appropriate. A key issue that needs to be dealt with effectively is the availability of adequate resources for the development and maintenance of the requisite expertise and the provision of technical assistance.